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PETITION NOT PRINTED

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 187

ELIZABETH ANN DUNCAN, PETITIONER,

vs.

CALIFORNIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

PETITION FOR CERTIORARI FILED JUNE 9, 1960

CERTIORARI GRANTED JUNE 27, 1960

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 187

ELIZABETH ANN DUNCAN, PETITIONER,

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

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[fol. a]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF VENTURA

No. CR 3220

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

ELIZABETH ANN DUNCAN, et. al., Defendant

Clerk's Transcript Appeal

APPEARANCES:

For Plaintiff and Respondent: Roy A. Gustafson, District Attorney, Court House, Ventura, California. Pho. MIller 3-6131. Stanley Mosk, State Attorney General, State Building, Los Angeles, California.

For Defendant and Appellant: S. Ward Sullivan and Frank P. Duncan, 215 West Fifth Street, Los Angeles 13, California. Pho. MAdison 5-8866.

[fol. 1] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF VENTURA

No. CR 3220

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

ELIZABETH ANN DUNCAN, LUIS ESTRADA MOYA and AUGUSTINE BALDONADO, Defendants.

INDICTMENT (Violation of § 187, Penal Code.)—Filed December 26, 1958

The Grand Jury of the County of Ventura hereby accuses Elizabeth Ann Duncan, Luis Estrada Moya and Augustine Baldonado of a felony, to-wit, a violation of Section 187 of the Penal Code in that on or about November 17, 1958 they murdered Olga Duncan.

Dated this 26th day of December, 1958.

A true bill.

George E. Ruggel, Foreman of the Grand Jury of the County of Ventura, State of California.

The following are the names of witnesses examined before the Grand Jury: Emma Short, Rudolph Romero, Diane Romero, Barbara Reed, Mrs. Harold Barnett, Sylvia [fol. 2] Butler, Doreen Corraini, Augustine Beldonado, Luis Estrada Moya, Gordon Johnston, M.D., Mrs. Mary Ann Dowhower, Frank Duncan, Hal Hammons, Jr., Clarence Henderson, Virgil Payton.

[fol. 3] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF VENTURA

[Title omitted]

BENCH WARRANT

The People of the State of California, to any Peace Officer of the State of California.

An order having been made on the 26th day of December, 1958, by the Superior Court of the State of California, in and for the County of Ventura, that Elizabeth Ann Duncan be arrested because of alleged violation of Section 187 of the Penal Code of the State of California.

You are, Therefore, Commanded forthwith to arrest Elizabeth Ann Duncan and bring her before said court, on the 30th day of December, 1958, 9:30 A.M.

By order of the Court.

Given under my hand with the seal of said Superior Court affixed this 26th day of December, 1958.

L. E. Hallowell, Clerk, by Stanley Robertson, Deputy Clerk.

STATE OF CALIFORNIA,
County of Ventura, ss:

Return

I Certify that I received the above warrant on December 30, 1958, and served the same by arresting the above named defendant —— thereon at ———— on December 30, 1958, and bringing her into court on December 30, 1958.

Wm. J. Suytar, Sheriff by Mary Horsey, Deputy Sheriff.

[fol. 4] Tuesday, December 30, 1958 9:30 O'Clock A.M.

Present: Hon. Chas. F. Blackstock, Judge of the Superior Court, County of Ventura, L. E. Hallowell, Clerk, by Wm. R. Peacock, Deputy, W. J. Suytar, Sheriff and Gladys Goodman and Cecil Van Vleck, Court Reporter.

CR 3220

THE PEOPLE, etc.,

vs.

ELIZABETH ANN DUNCAN, LUIS ESTRADA MOYA & AUGUSTINE BALDONADO

ARRAIGNMENT & APPOINTMENT OF COUNSEL—December 30, 1958

The District Attorney, defendant Elizabeth Ann Duncan, with her counsel, S. Ward Sullivan, and defendants Luis Estrada Moya and Augustine Baldonado, without attorneys, are present in Court.

Defendant Duncan is informed of her legal right, waives reading of the indictment, a copy of which is delivered to her, and at her request cause is continued until Jan. 6, 1959, at 2:00 P.M. for plea.

Defendant Moya is advised of his legal rights, whereupon, at his request, the Court appoints and assigns Nagao Fujita as counsel for said defendant.

Defendant Baldonado is informed of his rights and at his request the Court appoints John Danch, who is present, as attorney for Baldonado.

Cause as to Moya and Baldonado is thereupon continued until January 6, 1959, at 2:00 P.M. for further arraignment [fol. 5] and plea.

All defendants are remanded to the custody of the Sheriff.

CR 3218

THE PEOPLE, etc.,

vs.

ELIZABETH ANN DUNCAN

ARRAIGNMENT & CONTINUANCE FOR PLEA

The District Attorney and defendant, with her counsel, S. Ward Sullivan, present.

Defendant's counsel waives the recital of her legal rights and reading of the indictment, a copy of which is delivered to defendant.

At request of defendant, cause is continued until Jan. 6, 1959, at 2:00 P.M. for plea. She is remanded.

[fol. 6] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF VENTURA

[Title omitted]

MOTION FOR CHANGE OF VENUE—Filed January 6, 1959

Comes now the defendant Elizabeth Duncan, by her attorney S. Ward Sullivan, and moves this Honorable Court for a change of venue of the above entitled actions, from the County of Ventura, State of California, to another County in the State of California for the trial of said actions upon the ground that a fair and impartial trial cannot be had in the County of Ventura, State of California.

Said motion is made upon the affidavit of S. Ward Sullivan, served and filed herewith, and upon the records, papers and filed in said action.

Dated this 6th day of January, 1959.

S. Ward Sullivan—Attorney for Defendant Elizabeth Duncan.

[fol. 7] AFFIDAVIT IN SUPPORT OF MOTION FOR CHANGE OF VENUE

[Title omitted]

STATE OF CALIFORNIA,
County of Los Angeles, ss:

S. Ward Sullivan, being by me first duly sworn, deposes and says:

That he is the attorney for Elizabeth Duncan, one of the defendants in the above-entitled action; that an Indictment accusing the defendant Elizabeth Duncan with the murder of one Olga Duncan was returned by the Grand Jury of the County of Ventura, State of California, on Friday, December 26, 1958.

That prior to the return of said Indictment and on or about the 22nd. day of December, 1958, Roy Gustafson, District Attorney of the County of Ventura, State of California, released a written statement to the press as follows:

> "The brutal, calculated, revolting killing for hire of Olga Duncan is one of a number of horrible crimes [fol. 8] which have recently been committed in California. I simply cannot understand how some of our leaders, in the face of these events, can seriously contend that the death penalty is not appropriate punishment of such a crime.
>
> "Many persons contend that the death penalty does not deter murder. Frankly, I am sick of this illogical argument.
>
> "Of course penalties do not completely deter crimes. Jail sentences do not completely deter drunken drivers, burglars, robbers, or any other criminals, and death penalties do not completely deter murders. But that is no reason to dispense with penalties.
>
> "Retaliation is a basic instinct of the human race. In civilized societies, the government takes over from the individual the job of retaliating against a wrongdoer. From Biblical times, a life for a life has been recognized as just and fair.
>
> "The alternative in California, a life sentence which permits a prisoner to be paroled in seven years, simply is insufficient retaliation.

"I hope the people of this state rise up against the progaganda drivel that has flooded us lately about the so-called evils of capital punishment. They must demand that California retain the death penalty to deal [fol. 9] with . . . situations such as the Duncan case."

That said statement was published in the Ventura County Star-Free Press, a newspaper of general circulation in the County of Ventura, State of California, which said newspaper has a daily circulation of about 22,000 issues in said County of Ventura, State of California.

That thereafter and on or about December 27, 1958, and immediately following the return of the Indictment against the said Elizabeth Duncan, the said Roy Gustafson, District Attorney of the County of Ventura, State of California, released the following statement for publication, to wit:

"This crime," he declared, "is one of the most vicious and horrible in the annals of modern justice. Each new fact uncovered throughout the investigation has been more disgusting and shocking than the last.

"It should serve as an object lesson to all persons who find it necessary to extend a gratuitous and wasted sympathy toward murderers—asking that they be spared their lives.

"Nothing short of death could possibly be considered a just or a fitting penalty for the perpetrators of this crime against an innocent young mother-to-be."

That said statement likewise appeared in the said Ventura County Star-Press published on or about the 27th day of December, 1958.

That the people from whom the Jury would be drawn to try the defendant Elizabeth Duncan in the County of Ventura, State of California, have access to the public press; that the press and the public at large have been poisoned [fol. 10] against the defendant Elizabeth Duncan by the aforesaid statements made by the said Roy Gustafson and by him released to and published in the said Ventura County Star-Free Press; that the said statements were calculated to, and did in fact, arouse public passion and prejudice against the said Elizabeth Duncan and were cal-

culated to, and did in fact, bias and prejudice those persons in the County of Ventura who are likely to be called as trial jurors in said cause.

That lengthy statements have been published almost daily in newspapers published and circulated in Ventura County since the alleged homicide which have detailed alleged facts as well as alleged statements, admissions and confessions of Elizabeth Duncan's co-defendants.

That by reason of the foregoing, affiant believes that it will be impossible for the defendont, Elizabeth Duncan, to receive a fair and impartial trial in Ventura County.

WHEREFORE, affiant prays that this Court make an order transferring this cause to another County in the State of California for trial.

S. Ward Sullivan, Affidavit.

Subscribed and sworn to before me this 5th day of January, 1959.

Wilhelmina Reck, Notary Public in and for said County of Los Angeles, State of California.

[fol. 11] [File endorsement omitted]

AFFIDAVIT OF JACK R. MCHENRY IN OPPOSITION TO MOTION FOR CHANGE OF VENUE—Filed January 13, 1959

STATE OF CALIFORNIA,
County of Ventura, ss:

Jack R. McHenry, being first duly sworn, deposes and says that:

I am the managing editor of the Ventura County Star-Free Press, a newspaper published in the City of Ventura, California.

I have examined the issues of the Ventura County Star-Free Press from December 20, 1958, to date and I can find no story, article or editorial quoting Roy A. Gustafson, District Attorney of the County of Ventura, as follows:

> "This crime," he declared, "is one of the most vicious and horrible in the annals of modern justice.

Each new fact uncovered throughout the investigation has been more disgusting and shocking than the last.

"It should serve as an object lesson to all persons who find it necessary to extend a gratuitous and wasted sympathy toward murderers—asking that they be spared their lives.

"Nothing short of death could possibly be considered a just or a fitting penalty for the perpetrators of this crime against an innocent young mother-to-be."

Roy A. Gustafson did not make any such statement to me and I have no knowledge, information or belief that he made any such statement to anyone.

Jack R. McHenry, Subscribed and Sworn to before me this 12th day of January, 1959.

Harold J. Kelly, Notary Public in and for said County and State.

My Commission expires June 28, 1962.

[fol. 72] [File endorsement omitted]

AFFIDAVIT OF ROY A. GUSTAFSON IN OPPOSITION TO MOTION FOR CHANGE OF VENUE—Filed January 13, 1959

STATE OF CALIFORNIA,
County of Ventura, ss:

Roy A. Gustafson, being by me first duly sworn, deposes and says that:

I am the District Attorney of Ventura County. On or about December 21, 1958, I publicly made the following statement:

"The brutal, calculated, revolting killing for hire of Olga Duncan is one of a number of horrible crimes which have recently been committed in California. I simply cannot understand how some of our leaders, in the face of these events, can seriously contend that the death penalty is not appropriate punishment for the perpetrators of such a crime.

"Many persons contend that the death penalty does not deter murder. Frankly, I am sick of this illogical argument. Of course penalties do not completely deter crimes. Jail sentences do not completely deter drunken drivers, burglars, robbers or any other criminals and death penalties do not completely deter murderers. But that is no reason to dispense with penalties.

"Retaliation is a basic instinct of the human race. In civilized societies, the government takes over from the individual the job of retaliating against a wrongdoer. From biblical times, a life for a life has been recognized as just and fair.

"The alternative in California, a life sentence which permits a prisoner to be paroled in seven years, simply is insufficient retaliation. I hope the people of this state rise up against the propaganda drivel that has flooded us lately about the so-called evils of capital [fol. 13] punishment. They must demand that California retain the death penalty to deal with situations such as the Duncan case."

In that statement no mention was made of the defendants in the case of *People* v. *Elizabeth Duncan, et al.* I have never publicly declared my personal knowledge or belief of the guilt of the defendants or any of them. No statement ever made by me was calculated to arouse public passion and prejudice against the defendants or any of them.

Neither the following statement, nor anything resembling it, was ever made by me at any time:

"This crime," he declared, "is one of the most vicious and horrible in the annals of modern justice. Each new fact uncovered throughout the investigation has been more disgusting and shocking than the last.

"It should serve as an object lesson to all persons who find it necessary to extend a gratuitous and wasted sympathy toward murderers—asking that they be spared their lives.

"Nothing short of death could possibly be considered a just or a fitting penalty for the perpetrators of this crime against an innocent young mother-to-be."

To the best of my information and belief, the publications concerning this case have not aroused public passion and prejudice against the defendants, or any of them, to the extent that a fair and impartial jury to try the defendants cannot be obtained in Ventura County.

Roy A. Gustafson.

Subscribed and Sworn to before me this 12th day of January, 1959.

Franklin R. Greene, Notary Public in and for said County and State.

My Commission Expires Feb. 23, 1959.

[fol. 14] [File endorsement omitted]

AFFIDAVIT OF VOLNEY CUMMINS IN OPPOSITION TO MOTION FOR CHANGE OF VENUE—Filed January 13, 1959

STATE OF CALIFORNIA,
County of Ventura, ss:

Volney Cummins, being by me first duly sworn, deposes and says that:

I am the Undersheriff of Ventura County. I was present in the court room on January 6, 1959, when the defendants, Duncan, Baldinado and Moya were in court.

I am familiar with the seating capacity of the court room and I have had experience in estimating the size of crowds of persons. I estimate that the number of persons seated and standing in the court room together with the number of persons who were standing in the hall unable to gain admittance to the court room did not exceed two hundred (200). The population of Ventura County is approximately 170,000.

I heard the report that a woman attempted to hit defendant Elizabeth Duncan with a purse. I made numerous inquiries of officers, newspapermen, spectators and others in an attempt to verify this report. The only person whose name was given to me as one who had reportedly seen

the incident was William Lewis, investigator for S. Ward Sullivan, Attorney for the defendant Elizabeth Duncan.

Volney Cummins.

Subscribed and sworn to before me this 13th day of January, 1959.

Maxine E. Coutre, Notary Public in and for said County and State.

My Commission Expires Aug. 10, 1962.

[fol. 15] [File endorsement omitted]

AFFIDAVIT OF ROY A. GUSTAFSON IN OPPOSITION TO MOTION FOR CHANGE OF VENUE—Filed January 13, 1959

STATE OF CALIFORNIA,
COUNTY OF VENTURA, ss:

Roy A. Gustafson, being by me first duly sworn, deposes and says that:

I have examined the affidavits attached to the applications for removal of the case of *People* v. *Elizabeth Ann Duncan, et al.* Not a single affidavit appears from any person stating that the declarant is biased and prejudiced against the defendants, or any of them, or that the declarant believes that the defendants, or any of them, are guilty or that the declarant believes that the defendants, or any of them, should be executed. Moreover, in none of the affidavits does the declarant identify by name any person who made any statement regarding the defendants.

I am not aware of any person in Ventura County who has stated that he could not act fairly and impartially as a juror in the trial of the defendants, or any of them.

It is a matter of common knowledge that newspapers and other media of communication publish reports about crimes that have occurred which are of interest to the public. I know of no rule of law which prohibits any law enforcement officer from disclosing facts to the media of communication. I know of no rule of law which imposes

any censorship on media of communication which respect to publishing facts about a crime.

When the transcript of the Grand Jury hearing was filed with the Clerk of the Superior Court, the testimony of the witnesses before the Grand Jury became a matter of public record. There is no rule of law precluding the public from learning from the transcript what transpired before the Grand Jury. I have examined the exhibits attached to the affidavits filed with the applications for change of place of trial and can find nothing in the newspaper reports [fol. 16] published prior to the filing of the Grand Jury transcript which related the facts in nearly as great detail as they are related in the transcript of the Grand Jury hearing. It is obvious that had not one fact been disclosed by any law enforcement officer prior to the filing of the Grand Jury transcript, the attitude of the public after the filing of the Grand Jury transcript would have been the same as it now is.

I do not know of my own knowledge the exact length of time that the Grand Jury deliberated before returning an indictment against the defendants, but assuming that it was fifteen minutes, I know of no rule of law which requires that the Grand Jury deliberate any particular length of time before returning an indictment. On the contrary, I am familiar with the case of *People* v. *Daugherty* (1953), 40 Cal. 2d 876 where the defendant, appealing from a verdict of a trial jury imposing a death penalty for murder, claimed "that the jury reached a verdict in so short a time that it must have been prejudiced". The Supreme Court of California said that

> "it may be noted that the jury took an hour and a quarter to reach its verdict on the first phase of the trial. While the record consists of some 1,274 pages, the defendant's only defense at the trial was, as above stated, that the defendant was so befuddled by alcohol and illness that he could not form an intent and was incapable of premeditation or deliberation. There was no question that defendant killed Florena and the evidence of torture and premeditation and that his mind was not so affected is adequate. Inasmuch, however, as there were no eyewitnesses to the killing, most of the record consists of the People's structure of a

case based on circumstantial evidence. On the record we do not believe the time consumed in reaching the [fol. 17] verdict was so short as to indicate a failure to consider the evidence or of bias or prejudice or the denial of a fair trial."

The transcript before the Grand Jury was less than one-fifth as long as the transcript in the case of *People* v. *Daugherty*. Moreover, the Grand Jury had merely to determine whether the defendants should be tried in the Superior Court for murder and not whether they were guilty or whether, if guilty, they should suffer the death penalty. I cannot remember any case during the time that I have been District Attorney where the Grand Jury deliberated any longer between the time of the conclusion of the evidence and returning the indictment than the Grand Jury did in the present case.

The fact that newspapers and other media of communication are entitled to publish facts about a crime and the fact that members of the public may form or express opinions about the guilt of defendants are expressly recognized in the law of California. Section 1076 of the Penal Code provides that "no person shall be disqualified as a juror by reason of having formed or expressed an opinion upon the matter or cause to be submitted to such jury, founded upon public rumor, statements in public journals, circulars, or other literature, or common notoriety; *provided*, it appeared to the court, upon his declaration, under oath or otherwise, that he can and will, notwithstanding such an opinion, act impartially and fairly upon the matters to be submitted to him." I have no information indicating that it will be impossible to find twelve persons in Ventura County who, despite any opinions they may have formed from reading the newspapers, can and will act impartially and fairly upon the matters to be submitted to them as jurors in this case.

My statement concerning the desirability of retaining the death penalty in California is simply the opposite point of [fol. 18] view of the "widely known" opinion of William A. Gilbert referred to in his affidavit. I know of no rule of law which prohibits William A. Gilbert from urging the abolition of the death penalty or which prohibits me from urging the retention of the death penalty.

My statement that the death penalty is appropriate for the perpetrators of the murder of Olga Duncan cannot prejudice the defendants. The law of California is such that the defendants are guaranteed a fair trial. If, after such a trial, the defendants are found not to have perpetrated the crime, they obviously will not be prejudiced and my statement would be inapplicable to them. If, on the other hand, they are found guilty of first degree murder, then the statement will apply to them. The fact that it was made before the taking of testimony before the trial jury is of no consequence. In any case involving murder where the prosecutor seeks the death penalty, the fact that he will do so is always disclosed before the trial jury is selected by reason of the questions asked of prospective jurors as to the entertainment of such conscientious opinions as would preclude their finding the defendant guilty and imposing the death penalty. Consequently, whether prospective jurors know that I will seek the death penalty as the appropriate punishment from reading the newspapers or from hearing me say so in court is immaterial.

I again deny, as I have already done in another affidavit, that I made any such statement as is attributed to me on page six of the affidavit of Burt Henson.

The affidavit of Burt Henson further states that "he has heard various comments from time to time from residents of Ventura County indicating prejudice toward certain persons of Spanish-Mexican descent." During my eight years as District Attorney, I have heard no such comments. I represent that hundreds of Mexicans have been tried by judges and juries in Ventura County and I [fol. 19] am aware of not a single case wherein any court has ever held that any such person did not receive a fair trial because he was a Mexican. Persons of Mexican descent constantly serve as jurors in Ventura County. Based on my experience, jurors of Ventura County are extremely conscientious and do not permit the race, sex, origin, nationality, religion, or color of a defendant to influence their verdicts.

I admit that I represented to the court that a trial of this case should be had within a thirty (30) day period following the return of the indictment and I based that representation upon section 1050 of the Penal Code which states that

the "court shall set all criminal cases for trial for a date not later than thirty (30) days after the date of entry of the plea of the defendant." I also admit that I represented to the court that my client, the People of the State of California, is entitled to an early trial and I based that statement on section 681a of the Penal Code which states: "The welfare of the People of the State of California requires that all proceedings in criminal cases shall be heard and determined at the earliest possible time. It shall be the duty of all courts and judicial officers and of all district attorneys to expedite the hearing and determination of all such cases and proceedings to the greatest degree that is consistent with the ends of justice."

Roy A. Gustafson, District Attorney, County of Ventura, State of California.

Subscribed and sworn to before me this 13th day of January, 1959.

Maxine E. Coutre, Notary Public in and for said County and State.

My Commission Expires August 10, 1962.

[fol. 20] [File endorsement omitted]

AFFIDAVIT OF ROY A. GUSTAFSON IN OPPOSITION TO MOTION FOR CHANGE OF VENUE—Filed January 13, 1959

STATE OF CALIFORNIA,
County of Ventura, ss:

Roy A. Gustafson, being by me first duly sworn, deposes and says that:

On Page 7 of the affidavit of Burt M. Henson appears the statement that a newspaper article said: "Gustafson says Moya was using marijuana when he was arrested in the Duncan murder case." While the newspaper article was correctly quoted in the affidavit of Burt M. Henson, I made no such statement to anyone.

On the day following the publication of the article referred to, the same newspaper, the Ventura County Star-Free Press, published a statement saying that the earlier article was in error and that I had not made such a statement.

As far as I am aware, Moya was not using marijuana at the time he was arrested or at any time since 1956.

Roy A. Gustafson, District Attorney, County of Ventura, State of California.

Subscribed and sworn to before me this 13th day of January, 1959.

Maxine E. Coutre, Notary Public in and for said County and State.

My Commission Expires Aug. 10, 1962.

[fol. 21] [File endorsement omitted]

AFFIDAVIT OF JACK R. McHENRY IN OPPOSITION TO MOTION FOR CHANGE OF VENUE—Filed January 13, 1959

STATE OF CALIFORNIA,
County of Ventura, ss:

Jack R. McHenry, being first duly sworn, deposes and says that:

I am the Managing Editor of the Ventura County Star-Free Press, a newspaper published in the City of Ventura, California.

On December 22, 1958, the Ventura County Star-Free Press published in full the statement of District Attorney Roy A. Gustafson made the previous day calling for the retention of the death penalty in California.

No letters have been received to-date by the Ventura County Star-Free Press agreeing with the statement made by District Attorney Gustafson. Several letters were received disagreeing with the statement of District Attorney Gustafson and three of those letters were published. Ex-

hibit A, attached hereto and made a part hereof, sets forth these letters as published by the newspaper and the dates on which they were published.

Jack R. McHenry, Subscribed And Sworn to before me this 9th day of January, 1959.

Harold J. Kelly, Notary Public in and for said County and State.

My Commission Expires June 23, 1962.

[fol. 22] EXHIBIT "A" TO AFFIDAVIT

December 24, 1958

Death Penalty

Editor, The Star-Free Press:

I was interested in the statements made by our district attorney, Roy A. Gustafson, concerning the death penalty and its administration in California which appeared in the Star-Free Press on December 22nd, on page one.

Our district attorney says, "Many persons contend that the death penalty does not deter murder. Frankly, I am sick of this illogical argument." On page 29 of the report of the sub-committee of the judiciary committee on capital punishment published by the assembly of the state of California, is found this arresting conclusion. "It simply avers from statistical and theoretical considerations that capital punishment is no effective deterrent to crime."

Again the district attorney states, "Retaliation is a basic instinct of the human race. In civilized societies, the government takes over from the individual the job of retaliation against the wrong-doer. From Biblical times a life for a life has been recognized as just and fair." On page 30 of the above report is the following statement: ". . . one may hold to it (the death penalty) as a means of retribution on the theory that killers deserve to die. There is little question that such a view strongly motivates an adherence to the death penalty, regardless of whether it deters or not. One can easily understand this attitude,

and even share in it when a horrible crime is committed. Such a view is widely prevalent and naturally so. But one must observe that it is a departure from the accepted principles of modern penology." It is true that retaliation is a basic instinct of the human race but it is also the most primitive instinct in the human race. Are we going to nurture our primitive instincts or mature them up to our existing level of civilization?

Mr. Gustafson cited the Mosaic "law of the Claw" as a justification of the death penalty. As any good Biblical or classical scholar could have told him the maxim of "an eye for an eye" was originally one of mercy. The Near Eastern cultures were afflicted by terrible clan wars which often resulted in the annihilation of an entire family in retaliation for but a slight offense. The code decreed that only he who perpetrated a crime should be punished; and to a degree relative to the severity of the crime, it was meant to save lives, not destroy them.

If Mr. Gustafson is to forward his opinions via the front page of the paper it would seem to me that it is his duty as an attorney and a public servant to provide the public with substantial facts.

Robert D. Myers, 97 Third Street, Moorpark.

December 30, 1958

Death Penalty

Editor, The Star-Free Press:

Mr. Roy A. Gustafson, the district attorney of Ventura county, finds himself unable to understand how, in the face of brutal events like the Duncan murder, "our leaders . . . can seriously contend that the death penalty is not appropriate punishment for such a crime." He is quoted in the newspapers as referring to such a contention as "drivel" and goes on: "Many persons contend that the death penalty does not deter murder. Frankly, I'm sick of this illogical argument."

Inasmuch as the brutal, coldly calculated murder of Mrs. Duncan was committed with the death penalty on our stat-

ute books, it is difficult to see how the district attorney can find in this event a reason for refuting those who contend that the death penalty does not deter. In point of fact, the preponderance of evidence is on the side of the failure of the death penalty to deter, but Mr. Gustafson does not appear to be interested in evidence.

The district attorney switches quickly from a discussion of deterents to his real reason for wanting capital punishment retained on the state books. He wants revenge: "Retaliation is a basic instinct of the human race. In civilized societies, the government takes over from the individual the job of retaliating . . ."

I am frankly troubled by the district attorney's views concerning "basic instincts" and "civilization." I know of no professional psychologist who lists such a basic instinct. As for civilization, it strikes me that lowering ourselves to the level of Mrs. Duncan's murderers is anything but civilized. However, if we follow Mr. Gustafson's reasoning to its logical conclusion, we should inflict on the murderers the preliminary beatings and terror which Mrs. Duncan was subjected, and toss their bruised and battered and possibly half-alive bodies in some shallow grave.

We must act through the agency of government, of course. Why not such retaliation? And why not make a public spectacle of the procedure in order to better express the "basic instinct" to which the district attorney refers and achieve the assertedly deterrent effect besides?

Because we (including the district attorney of Ventura county) would regard such action as degraded and uncivilized. Then why degrade ourselves respecting the fundamental act, namely the taking of a life (or lives), and why call this "civilized"?

Society best shows its regard for human life and most effectively teaches its members to respect human life when it refuses to take a life, even under the extreme provocation provided by murderers like those who killed Mrs. Duncan. This is the simple truth that somehow evades Mr. Gustafson. However, simple truths have long escaped those of us who substitute pejoratives like "drivel" for reasoned argument and carefully marshalled evidence.

Harry Girvetz, 242 Las Alturas road, Santa Barbara, Calif.

Editor's note: Mr. Girvetz is a professor of philosophy and teacher of courses in ethics at Santa Barbara college of the University of California.

January 3, 1959

Retribution!

Editor, The Star-Free Press:

Awake! all ye citizens of California. If we are to be humanly wise we must follow the absolute truth of our Great Realist. Let us see through his eyes, honor his reasoning, judge as he judges, and proclaim our "basic instincts"; an eye for an eye, tooth for tooth and life for life!

Hail! Mighty Father of Retribution. Teach us to be realistic and bestow upon our moral conscious your magic password: "Drivel." Show us the way according to the Gospel of "basic instinct": Lovely Olga took away the "light" of Mrs. Duncan's life and Mrs. Duncan returned evil for evil by taking Olga's life.

Oh, wise D. A., bless us with the rehabilitating power of retaliation as the human solution to our problems. Help us to reshape society in the image of Mrs. Duncan! Lead us on the path of your righteous indignation to the voting polls that we might express our anger and fear, our hate. Direct us to make Holy our statutes in the truth of what you believe is the nature of the human race; that we think, live, and breathe lower than the animals, for, the most savage of beasts are unlearned in the human characteristic of pure revenge!

Truly, with your light shining upon us . . . with you in the lead . . . we shall make the government our instrument of retaliation and change the law to read: "Purge by Liquidation." Hallelujah! Amen.

Question: If one human being is justified in taking the life of another human being, why has society outlawed the murderer and called murder a criminal act?

Answer: Murder is unlawful but capital punishment is retribution by law . . . to wonder further is illogical, unrealistic and drivel!

Bette Vorbeck, 601 Shady Lane, Ojai, Calif.

[fol. 23] IN THE SUPERIOR COURT OF VENTURA COUNTY

Tuesday, January 6, 1959. 9:30 O'clock A.M.

CR 3220

THE PEOPLE, ETC.,

vs.

ELIZABETH ANN DUNCAN, ET. AL.

PLEAS OF NOT GUILTY & NOT GUILTY BY REASON OF INSANITY, ORDER APPOINTING ALIENISTS, ETC.—January 6, 1959

The District Attorney, defendant Elizabeth Ann Duncan with her counsel S. Ward Sullivan, defendant Luis Estrada Moya, with his attorney Burt Henson and defendant Augustine Baldonado, with his counsel John Danch, are present in Court.

The defendants are duly arraigned, state their true names to be as alleged in the Indictment on file herein, which is read and a copy thereof delivered to each defendant by the Clerk.

Thereupon, defendant Elizabeth Ann Duncan enters her plea of not guilty and not guilty by reason of insanity of the offense of violation of Section 187 of the Penal Code, as charged in the Indictment.

Pursuant to law, the Court appoints Doctors Louis R. Nash and Philip R. A. May, members of the staff of Cam-
[fol. 24] arillo State hospital to examine defendant as to her sanity and to report their findings to the Court.

Cause as to defendants Moya and Baldonado is continued until January 13, 1959, at 9:30 A.M. for plea at request of their respective counsel.

Defendant Duncan at this time moves the Court for a change of venue from Ventura County to another County in the State of California for the purpose of trial.

Said motion is by the Court denied, without prejudice.

With both defendant Duncan and her counsel waiving statutory time, said cause as to defendant Duncan is set down for jury trial on Monday, February 16, 1959, at 10:00 A.M. and the Sheriff is ordered to summon 250 prospective jurors to be in attendance upon the Court at said time.

All defendants are remanded to the custody of the Sheriff.

[fol. 25] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF VENTURA

[Title omitted]

ORDER DIRECTING IMPANELLING OF JURY—January 15, 1959

Pursuant to section 214 of the Code of Civil Procedure, the Court orders that a trial jury of one hundred fifty persons be drawn and summoned to attend before the Court in the case of People v. Duncan, et al, at 10:00 A.M., February 16, 1959. Any order heretofore made for a different number is revoked.

Dated this 15th day of January, 1959.

Chas. F. Blackstock, Judge of the Superior Court.

[fol 26] IN THE SUPERIOR COURT OF VENTURA COUNTY

ORDER RE NUMBER OF PROSPECTIVE JURORS—January 15, 1951

[Title omitted]

Good cause appearing therefor, it is by the Court ordered that the order heretofore made for 250 prospective jurors in the above entitled cause be and the same is hereby vacated and set aside and 150 prospective jurors are ordered summoned for Feb. 16, 1959, at 10:00 A.M. to serve as may be needed in the jury trial of said cause.

[fol. 27] [File Endorsement Omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF VENTURA

[Title Omitted]

NOTICE OF APPLICATION FOR REMOVAL OF ACTION P. C. 1033—Filed February 13, 1959

To the Honorable Roy A. Gustafson, District Attorney, County of Ventura:

You Will Please Take Notice that Defendant, Elizabeth Ann Duncan, will make application for removal of action or motion for change of venue on Monday, February 16, 1959, at the hour of 9:30 A.M. or as soon thereafter as counsel can be heard in the courtroom of the above-entitled Court, the Honorable Chas. F. Blackstock, Judge, Courthouse, Ventura California.

S. Ward Sullivan, Attorney for Defendant, Elizabeth Ann Duncan.

I hereby acknowledge receipt of a copy of this notice, a copy of the application for removal, and copies of affidavits in support of application, this 13th day of February, 1959.

Woodruff J. Deem, Deputy District Attorney, County of Ventura.

[fol.28] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF VENTURA

[Title Omitted]

No. CR 3220

APPLICATION FOR REMOVAL OF ACTION P. C. 1033

Defendant Elizabeth Ann Duncan, by and through her counsel, S. Ward Sullivan, hereby makes application to the above-entitled Court for removal of the action or change of venue in the above-entitled action on the ground that a

fair and impartial trial cannot be had in the County of Ventura, State of California.

This application is made under the provisions of Sections 1033 and 1034 of the Penal Code of the State of California.

This application is made upon the affidavits attached hereto and upon all the records, papers and files in said action, including the affidavits of William A. Gilbert, Donald L. Benton, Floyd K. Gressett, David R. Drapeau, David E. Flynn and Burt M. Henson, heretofore filed herein in support of the application for removal and motion for change of venue on behalf of the co-defendant, Louis Moya.

Dated: February 12, 1959.

S. Ward Sullivan, Attorney for Defendant, Elizabeth Ann Duncan.

[fol. 29] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF VENTURA

[Title Omitted]

AFFIDAVIT OF ELIZABETH ANN DUNCAN IN SUPPORT OF APPLICATION FOR REMOVAL OR MOTION FOR CHANGE OF VENUE

STATE OF CALIFORNIA,
County of Ventura, ss:

Elizabeth Ann Duncan, being first duly sworn, deposes and says:

That I am one of the defendants in the above-entitled action, now pending in the Superior Court of the State of California in and for the County of Ventura.

I have been incarcerated in the Ventura County Jail at Ventura, California, since about the 14th day of December, 1958, and have only been able to communicate with my attorney, S. Ward Sullivan, my son, Frank Duncan, and my sister, together with the psychiatrists appointed by the Court to examine me.

Based upon information which has been furnished to me by my attorney, I believe and therefore allege that I will not be able to have a fair and impartial trial in the County

of Ventura and hereby join with my attorney in the application for removal of this action or motion for change of venue filed by my said attorney.

Elizabeth Ann Duncan.

Subscribed and sworn to before me this February 13, 1959.

—— L. Turner.

Notary Public in and for said County & State.

My commission expires 11/7/59.

[fol. 30] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF VENTURA

[Title omitted]

AFFIDAVIT IN SUPPORT OF APPLICATION FOR REMOVAL OR MOTION FOR CHANGE OF VENUE

STATE OF CALIFORNIA,
County of Los Angeles, ss:

S. Ward Sullivan, being first duly sworn, deposes and says:

That I am an Attorney at Law, duly licensed to practice as such in all the Courts of the State of California, and that I am attorney for ELIZABETH ANN DUNCAN, one of the defendants in the abov-entitled action; that an Indictment accusing the defendant, Elizabeth Ann Duncan, with the murder of one Olga Duncan was returned by the Grand Jury of the County of Ventura, State of California, on Friday, December 26, 1958.

That prior to the return of said Indictment and on or about the 22nd day of December, 1958, Roy Gustafson, District Attorney of the County of Ventura, State of California, released a written statement to the press as follows:

> "The brutal, calculated, revolting killing for hire of [fol. 31] Olga Duncan is one of a number of horrible crimes which have recently been committed in California. I simply cannot understand how some of our

leaders, in the face of these events, can seriously contend that the death penalty is not appropriate punishment of such a crime.

"Many persons contend that the death penalty does not deter murder. Frankly, I am sick of this illogical argument.

"Of course penalties do not completely deter crimes. Jail sentences do not completely deter drunken drivers, burglars, robbers, or any other criminals, and death penalties do not completely deter murders. But that is no reason to dispense with penalties.

"Retaliation is a basic instinct of the human race. In civilized societies, the government takes over from the individual the job of retaliating against a wrongdoer. From Biblical times, a life for a life has been recognized as just and fair.

"The alternatives in California, a life sentence which permits a prisoner to be paroled in seven years, simply is insufficient retaliation.

"I hope the people of this state rise up against the propaganda drivel that has flooded us lately about the so-called evils of capital punishment. They must demand that California retain the death penalty to deal with . . . situations such as the Duncan case."

[fol. 32] That said statement was published in the Ventura County Star-Free Press, a newspaper of general circulation in the County of Ventura, State of California, which said newspaper was widely circulated through street sales and home deliveries in said County of Ventura, State of California.

That numerous other statements by the said Roy A. Gustafson, referring to the above-entitled case, have been published in newspapers of general circulation in the County of Ventura, State of California, as well as articles purportedly reporting statements made by other law enforcement officers of both Santa Barbara and Ventura Counties. Additionally, between the 20th of December, 1958, and the 31st day of December, 1958, many other articles were published in both the Ventura County Star-Free Press and the Oxnard Press Courier covering alleged facts concerning the investigation of the above-entitled case and practically the whole of the recorded transcript

of the testimony taken before the Grand Jury which returned the Indictment in the above-entitled matter. That said newspapers have been heretofore filed in this action as Exhibits Nos. 3 to 28 inclusive, filed herein in support of the application for removal or change of venue on behalf of the co-defendant, Louis Moya, to which reference is hereby made, and said Exhibits are by reference incorporated herein and made a part hereof. Affiant further refers to, incorporates herein and makes a part hereof, Exhibits Nos. 29 to 35 inclusive, filed herein in support of the application for removal or change of venue filed herein on behalf of the co-defendant Louis Moya.

As evidence of the widespread publicity which this case has attained, affiant has annexed hereto, made a part hereof and marked Exhibit A (Consisting of 8 pages), copies of newspaper articles appearing in the Ventura Star-Free Press and the Oxnard Press Courier between the dates of [fols. 33-34] January 12, 1959 and February 2, 1959 inclusive.

That the people from whom the jury would be drawn to try the defendant, Elizabeth Ann Duncan, in the County of Ventura, State of California, have access to the public press; that the press and the public at large have been poisoned against the defendant, Elizabeth Ann Duncan, by the aforesaid statements made by the said Roy A. Gustafson and by him released to and published in the Ventura County Star-Free Press; that the said statements were calculated to, and did in fact, arouse public passion and prejudice against the said Elizabeth Ann Duncan and were calculated to, and did in fact, bias and prejudice those persons in the County of Ventura, State of California, who are likely to be called as trial jurors in said cause.

That the lengthy statements that have been published almost daily in newspapers published and circulated in Ventura County since the alleged homicide and which have detailed alleged facts, testimony taken before the Grand Jury, as well as alleged statements, admissions and confessions of Elizabeth Ann Duncan's co-defendants, were calculated to, and did in fact, bias and prejudice those persons in the County of Ventura, State of California, who are likely to be called as trial jurors in said cause.

That by reason of the foregoing, affiant believes that it will be impossible for the defendant, Elizabeth Ann Duncan, to receive a fair and impartial trial in Ventura County.

Wherefore, affiant prays that this Court make an Order authorizing the removal of this cause to another County in the State of California for trial.

S. Ward Sullivan, Affiant.

Subscribed and sworn to before me this February 12th, 1959.

Wilhelmina Reck, Notary Public in and for said County and State.

[fol. 35] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF VENTURA

[Title omitted]

AFFIDAVIT AND REQUEST FOR ORDER TO PRODUCE PRISONER AS A WITNESS (Penal Code, § 2621.)—Filed February 12, 1959

I, Roy A. Gustafson, say that:

I am the District Attorney of the County of Ventura, State of California:

The testimony of Julia Ellen Price will be material and necessary to the prosecution of the above-entitled criminal action, namely, it will be of substantial aid to the jury in determining whether or not the defendant murdered Olga Duncan as charged in the indictment on file in said action.

The said Julia Ellen Price is presently incarcerated in the California Institution for Women at Corona, California, which institution lies outside the County of Ventura. She was received at the said institution on January 17, 1959, in order to begin serving a sentence of imprisonment.

The testimony of the said Julia Ellen Price will, I believe, aid the jury more if it is given in person from the

witness stand in the trial of the said action rather than in the form of a deposition.

[fol. 36] Wherefore, I pray this Court to issue its order to the Superintendent of the said institution to deliver the said Julia Ellen Price into the custody of the Sheriff of the County of Ventura for the purpose of being produced as a witness for the plaintiff in the trial of the said action.

I certify under penalty of perjury that the foregoing is true and correct.

Executed at Ventura, California, on February 15, 1959.

Roy A. Gustafson.

[fol. 37] In the Superior Court of Ventura County

Monday, February 16, 1959. 10:00 o'clock A.M.

Clerk's Minutes Re Denial of Motion for Change of Venue and Impanelling of Jury—February 16, 1959

Trial of the above entitled cause comes regularly on at this time, with the District Attorney and defendant Elizabeth Ann Duncan, with her counsel, S. Ward Sullivan, present.

Upon roll call of the prospective jurors, it is stipulated that when and if Charles W. Borse appears in Court his name may be placed in the jury box.

Counsel approach the bench, where defense counsel again moves the Court for a change of venue.

Said motion is by the Court denied, without prejudice for renewal after voir dire examination of the prospective jurors.

Pursuant to stipulation by and between respective counsel, Mrs. Mildred E. Halter, Esther L. Garner and Floyd Dungan, are excused.

Counsel thereupon proceed with the impanelment of a jury.

[fol. 38] Clyde H. Campbell is excused for cause.

At the hour of 12:00 o'clock noon, a recess is taken until the hour of 1:45 o'clock P.M. this date.

1:45 o'clock P.M.

CR 3220

THE PEOPLE, etc.,

vs.

ELIZABETH ANN DUNCAN, et al.

FURTHER TRIAL

Trial of the above entitled cause is resumed at this time, with the District Attorney and defendant, with her counsel present.

Pursuant to stipulation, Goldie M. Ferry is excused.

Counsel continued with the impanelment of a jury, whereupon, the following prospective jurors are excused for cause:

Donald D. Keller, Nelle E. Holt, Ivy L. Holzer, Charles J. Carmack, James H. Hunt, Martha Baradat, Fred Lee Eads and William A. King.

The Court excuses Walter W. Boynton on its own motion and Charles W. Borse is excused by stipulation.

At the hour of 4:30 P.M., a recess is taken until February 17, 1959, at 10:30 A.M.

[fol. 39] IN SUPERIOR COURT OF VENTURA COUNTY

ORDER FOR ELECTRO-ENCEPHALOGRAM AT CAMARILLO STATE HOSPITAL—February 17, 1959

The District Attorney and defendant Elizabeth Ann Duncan, with her counsel, S. Ward Sullivan, are present in the Court's chambers.

The matter of taking photographs in the Court room while said Court is in session is mentioned by the District Attorney at this time, whereupon, defendant and her counsel state that they have no objections to said picture-taking.

At request of the psychiatrists heretofore appointed in this cause, with the consent of said defendant and her attorney, and good cause appearing therefor,

The Sheriff of the County of Ventura is ordered and directed to transport Elizabeth Ann Duncan to Camarillo State hospital for the purpose of conducting an electro-encephalogram examination, said examination to take place at a time arranged by said psychiatrists and defense counsel.

At the request of said doctors, defendant and her attorney consent to a blood sample being taken for the [fol. 40] purpose of a blood analysis in conjunction with their examination of Elizabeth Ann Duncan.

CR 3220

THE PEOPLE, etc.,

vs.

ELIZABETH ANN DUNCAN, et al.

FURTHER TRIAL

Trial of the above entitled cause is resumed at this time, with the District Attorney and defendant Elizabeth Ann Duncan, with her counsel, present.

Pursuant to stipulation, Gloria La France, Elmer Hoscheit and Paul Donnally are excused, along with Muriel J. Sherwin, Forrest Fuger and Jerry Baptiste.

Counsel continue with the impanelment of a jury, whereupon, defense counsel challenges Joseph T. Porter and Susie F. Saavedra for cause and the Court disallows said challenges.

At the hour of 12:03 P.M., a recess is taken until 1:45 P.M. this date.

1:45 o'clock P.M.

CR 3220

THE PEOPLE, etc.,

vs.

ELIZABETH ANN DUNCAN, et al.

FURTHER TRIAL

Trial of the above cause is resumed at this time, with the District Attorney, and defendant, with her counsel, present.

[fol. 41] Upon stipulation, Abner Poteet and Mrs. Willie Parr are excused.

Counsel continue with the impanelment of a jury and thereafter George W. Hawkins, August C. Fenner, Jehrie Dodson and Ila Jean Farmer are excused for cause.

Ruth Linter and Leo Canelli are excused by stipulation.

At the hour of 4:35 P.M., a recess is taken until February 18, 1959, at 10:00 A.M.

[fol. 42] In Superior Court of Ventura County

Wednesday, February 18, 1959. 10:00 o'clock A.M.

Further Trial

Trial of the above cause is resumed at this time, with the District Attorney and defendant, with her counsel, present.

Pursuant to stipulation, prospective jurors Grace E. Dominy and Robert E. Noonan are excused.

Counsel proceed with the impanelment of a jury, whereupon, defense counsel's challenge for cause of Stephen M. Flynn is disallowed by the Court.

Artie A. Robinson is excused by stipulation and Robert L. Sechrest is excused for cause.

Pursuant to stipulation, defense counsel exhibits photographs of Luis Estrada Moya and Augustine Baldonado to prospective juror Leandro Franco.

At the hour of 12:05, a recess is taken until the hour of 1:45 P.M. this date.

[fol. 43] 1:45 o'clock P.M.

CR 3220

THE PEOPLE, etc.,

vs.

ELIZABETH ANN DUNCAN, et al.

FURTHER TRIAL

Trial of the above cause is resumed at this time, with the District Attorney and defendant, with her counsel, present.

Counsel continue with the impanelment of a jury and thereafter the following prospective jurors are excused for cause:

Lucy V. Knutson, Robert E. Hill, Lydia Gisler, Donald D. Bourne and Horace D. Morgan.

Out of hearing of the prospective jurors, counsel stipulate that Court may inquire as to prospective juror's attitude toward the death penalty.

The challenge for cause by defendant of Erma S. Behrens is disallowed.

At the hour of 4:00 P.M., a recess is taken until February 19, 1959, at 10:00 A.M.

[fol. 44] [File endorsement omitted]

[Title Omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF VENTURA

No. CR 3220

APPLICATION FOR LEAVE TO APPEAR AS AMICUS CURIAE.—Filed February 19, 1959

The undersigned is a member of the bar of California, of the Supreme Court of California and of the Supreme Court of the United States.

He is general counsel for the American Civil Liberties Union of Southern California.

He desires to appear herein amicus curiae, on the defendants' motions for change of venue, solely out of concern for due process of law and fair trial as guaranteed by the Constitution of the United States and the Constitution of the State of California.

It is this concern which prompted the appearance of the applicant either as amicus in behalf of the American Civil Liberties Union, or as counsel furnished to the individual involved by the American Civil Liberties Union in the following cases:

People v. *Cahan*, 44 Cal. 2d 434;
Rochin v. *California*, 342 U.S. 165;
[fol. 45] *Stroble* v. *California*, 343 U.S. 181;
Crooker v. *California*, 357 U.S. 433.

Of the appearance of counsel for the American Civil Liberties Union as amicus in a case before it, the Supreme Court of the United States, in *Minersville District* v. *Gobitis*, 210 U.S. 586, at 593, said:

> "... By their able submissions, the Committee on the Bill of Rights of the American Bar Association and the American Civil Liberties Union, as friends of the Court, have helped us to our conclusion."

Wherefore, applicant asks leave of Court to appear as amicus curiae herein.

Respectfully submitted, A. L. Wirin.

[fol. 46] IN SUPERIOR COURT OF VENTURA COUNTY

Thursday, February 19, 1959. 10:00 o'clock A.M.

FURTHER TRIAL

Trial of the above cause is resumed at this time, with the District Attorney and defendant, with her counsel, present.

Prospective juror Carl Beasley is excused by stipulation.

Counsel continue with the impanelment of a jury, where-

upon, Vera Lorraine Hall is excused for cause and defendant's challenge for cause of Harold Peyton Johnson is dis-allowed by the Court.

At the hour of 12:02 P.M., a recess is taken until the hour of 1:45 P.M. this date.

At this time, the application of A. L. Wirin to serve as amicus curiae is granted.

1:45 o'clock P.M.

OR 3220

THE PEOPLE, etc.

vs.

ELIZABETH ANN DUNCAN, et al.

FURTHER TRIAL

[fol. 47] The District Attorney and defendant, with her counsel, are present, cause coming on for further trial.

Pursuant to stipulation, Leandro Franco is excused from jury duty.

Counsel continue with the impanelment of a jury, whereupon, the following prospective jurors are excused for cause:

Trini B. Sawyers, Isabelle C. Hart, Ruby L. Menges, Anthony Bollero, Mac W. Capper, Hayden K. Collins, Ben Akers, Jr., Viola Henry, Rosewell S. Hickok, Jeanne R. Sollen, Zelda Burns and Clara H. Dodds.

Defendant's challenge for cause of Charles D. Bushman and Pearl Wayman is disallowed.

At the hour of 5:10 P.M., the prospective jurors are admonished and a recess taken until February 20, 1959, at 10:00 A.M.

[fol. 48] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF VENTURA

[Title omitted]

ORDER FOR THE TEMPORARY REMOVAL OF A PRISONER TO BE A WITNESS (PENAL CODE, § 2621.)—February 16, 1959

County of Ventura.

The People of the State of California to the Superintendent of the California Institution for Women at Corona, California:

An order having been made this day by me, that Julia Ellen Price be produced in this court as a witness in the case of the People of the State of California vs. Elizabeth Ann Duncan, No. CR-3220, you are commanded to deliver her into the custody of the Sheriff of the County of Ventura for the purpose of being brought before this court to testify as a material witness for the plaintiff in the said case and being returned to your institution when she is no longer required as a witness.

IN WITNESS WHEREOF I have hereunto affixed my signature and the seal of the Superior Court of the State of California in and for the County of Ventura this 16th day of February, 1959.

Chas. F. Blackstock, Judge of said Court.

[fol. 49] IN SUPERIOR COURT OF VENTURA COUNTY

Friday, February 20, 1959. 10:00 O'Clock A.M.

FURTHER TRIAL

Trial of the above cause is resumed at thie time, with the District Attorney and defendant, with her counsel, present.

Counsel continue with the impanelment of a jury, whereupon, the following prospective jurors are excused for cause:

Earl G. Bond, Susie J. Peyton, Maurice E. Bisson, William J. Stocker, Dorothy P. Durr, Earl S. Casteel, George W. Wooff and Robert W. Young.

Counsel at this time approach the bench, where Mr. Sullivan renews his motion for a change of place of trial, which motion is argued by respective counsel and by the Court denied.

The Court, being of the opinion that this is likely to be a protracted trial, orders that two extra jurors be selected as alternates to be used as required.

Thereupon, the following jurors are regularly impaneled and sworn, to-wit:

[fol. 50] Mrs. Mildred R. Dewey, Miss Edna E. Newhart, Paul D. Gosney, Miss Mary Ellen Hall, Archie L. Horrell, Mrs. Leva C. Calhoon, Mrs. Evelyn H. Bartels, William J. Missimer, Mrs. B. Jewel Berch, Hans Gramckow, Mrs. Mary Lucille Osburn and Mrs. Bernice M. Arend.

At the hour of 12:05 P.M., the jury is admonished and a recess taken until the hour of 1:45 P.M. this date.

1:45 O'Clock P.M.

CR 3220

THE PEOPLE, etc.,

vs.

ELIZABETH ANN DUNCAN, et al.

FURTHER TRIAL

Trial of the above entitled cause is resumed at this time, with the District Attorney and defendant, with her counsel, present, along with the jury.

Counsel proceed with the impanelment of two alternate jurors.

Jan Fosselius, Edward L. Cordell and Mrs. Clara J. Trom are excused for cause.

There upon, Mrs. John H. Coultas and Mrs. Treva L. Allred are regularly impaneled and sworn as alternate jurors.

At the hour of 3:00 P.M., the jury is admonished and a recess taken until February 24, 1959, at 10:00 A.M.

[fol. 51] In Superior Court of Ventura County

Tuesday, February 24, 1959. 10:00 O'Clock A.M.

Further Trial

Trial of the above cause is resumed at this time, with the District Attorney and defendant, with her counsel, present, along with the jury and alternates.

The indictment is read by the Clerk, whereupon, the District Attorney presents his opening statement. Defense counsel reserves his right to make an opening statement.

Leonard E. Peck, called by the People, is sworn and testifies.

A map of certain portions of the City of Santa Barbara is marked as People's Exhibit No. 1 for identification.

A photograph showing a portion of the interior of the Blue Onion cafe is marked as People's Exhibit No. 2 for identification.

A photograph of F. W. Woolworth Co. building is marked as People's Exhibit No. 3 for identification.

A photograph of exterior of Blue Onion Drive-In cafe is marked as People's Exhibit No. 4 for identification.

[fol. 52] A photograph of intersection of State Street and Valerio, looking North, in Santa Barbara, is marked as People's Exhibit No. 5 for identification.

A photograph of Silverwoods store is marked as People's Exhibit No. 6 for identification.

A photograph taken from sidewalk level of sign "The Tropical Cafe" looking North on State Street, is marked as People's Exhibit No. 7 for identification.

A photograph of front of Tropical Cafe is marked as People's Exhibit No. 8 for identification.

A photograph of drive way, with car parked in center background, is marked as People's Exhibit No. 9 for identification.

A photograph of front of white house, No. 112, is marked as People's Exhibit No. 10 for identification.

A photograph of street entrance to Garden Apartments is marked as People's Exhibit No. 11 for identification.

A photograph of stairway leading to Olga Duncan's apartment, also showing manager's apartment, is marked as People's Exhibit No. 12, for identification.

Another photograph of Garden Apartments taken from inner yard is marked as People's Exhibit No. 13 for Identification.

Photograph of same apartment house taken looking from inner yard toward Garden street is marked as People's Exhibit No. 14 for identification.

[fol. 53] Photograph of Valerio street apartments, with car parked on left, is marked as People's Exhibit No. 15 for identification.

Another photograph of Valerio apartments, with brick walk on left, is marked as People's Exhibit No. 16, for identification.

Photograph of same apartments, taken from rear of building, is marked as People's Exhibit No. 17, for identification.

Photograph of Pacific Jewelry & Loan Co. is marked as People's Exhibit No. 18, for identification.

Photograph of Security-First National Bank building is marked as People's Exhibit No. 19 for identification.

Photograph of top of garage, with lawn mower at left center, is marked as People's Exhibit No. 20, for identification.

Photograph of white house, with two garages in front, located on West Cota street, is marked as People's Exhibit No. 21, for identification.

Photograph of Neal Callahan building, showing restaurant and barber shop, is marked as People's Exhibit No. 22, for identification.

A diagram of interior of Tropical cafe is marked as People's Exhibit No. 23, for identification.

Mr. Sullivan's motion to exclude certain witnesses from the Court room is by the Court denied.

Mary Ann Dowhower, called by the People, is sworn and [fol. 54] testifies.

Certain portions of Mrs. Dowhower's testimony are stricken on motion of defense counsel.

Certified copy of marriage certificate of Frank Patrick Duncan and Olga Kupczyk, of June 20, 1958, recorded in Book 1500, at page 415, official Santa Barbara County records, is marked as People's Exhibit No. 24 and received into evidence.

At the hour of 12:00 o'clock noon, the jury and alternates are admonished and a recess taken until the hour of 2:00 P.M. this date.

2:00 P.M. O'Clock

CR 3220

THE PEOPLE, etc.,

vs.

ELIZABETH ANN DUNCAN, et al.

FURTHER TRIAL

Trial of the above cause is resumed at this time, with the District Attorney, defendant, with her counsel, all jurors and alternates present.

Barbara Jean Reed, called by the District Attorney, is sworn and testifies.

Certain portions of Mrs. Reed's testimony are stricken on motion of Mr. Sullivan.

Dorothea Barnett, called by the prosecution, is sworn and testifies.

A photograph of Olga Kupczyk Duncan wearing nurse's [fol. 55] uniform is received in evidence as People's Exhibit No. 25. Photograph of Olga Duncan wearing black dress is received as People's Exhibit No. 26.

At this time People's Exhibit No. 11, 12, 13 and 14, heretofore marked for identification, are received in evidence.

Defense counsel's motion to strike certain portions of Mrs. Barnett's testimony is granted.

Diane Romero, called by the People, is sworn and testifies.

A portion of Mrs. Romero's testimony is stricken on motion of Mr. Sullivan.

At the hour of 4:25 P. M., the jury and alternates are admonished and a recess taken until February 25, 1959, at 10:00 A.M.

[fol. 56] IN SUPERIOR COURT OF VERTURA COUNTY

Wednesday, February 25, 1959. 10:00 O'Clock A. M.

FURTHER TRIAL

Trial of the above cause is resumed at this time, with the District Attorney, defendant, with her counsel, jury and alternate jurors present.

Diane Romero, heretofore sworn, resumes the stand for the purpose of cross-examination.

Rudolph Paulino Romero, called by the People, is sworn and testifies.

A certain portion of Mr. Romero's testimony is stricken on motion of Mr. Sullivan.

Rebecca N. Diaz, called by the prosecution, is sworn and testifies.

On motion of defense counsel, certain portions of Mrs. Diaz's testimony is stricken.

At the hour of 12:00 o'clock noon, the jury and alternates are admonished and a recess taken until the hour of 1:45 P.M. this date.

[fol. 57] 1:45 O'Clock P.M.

CR 3220

THE PEOPLE, etc.,

vs.

ELIZABETH ANN DUNCAN, et al.

FURTHER TRIAL

Trial of the above cause is resumed at this time, with the District Attorney, defendant, with her counsel, jury and alternate jurors present.

Ralph William Winterstein, called by the District Attorney, is sworn and testifies.

Ventura County Superior Court file No. D-47814, entitled Frank Patrick Duncan vs. Olga Duncan, is received in evidence as People's Exhibit No. 27.

Portions of Mr. Winterstein's testimony are stricken on motion of defense counsel.

Mr. Sullivan's motion to strike all of the testimony of Mr. Winterstein is denied.

Hal V. Hammons, Jr., called by the People, is sworn and testifies.

Mr. Sullivan's motion to strike all of the testimony of Mr. Hammons is denied.

The District Attorney is granted permission to recall Mr. Winterstein at a later time.

Bobby J. Huggins, called by the prosecution, is sworn and testifies.

Defense counsel's motion to strike protions of Mr. Hug-
[fol. 58] gins' testimony is granted.

The Court denies Mr. Sullivan's motion to strike all the testimony of Mr. Huggins.

At the hour of 4:00 P.M., the jury and alternate jurors are admonished and a recess taken until February 26, 1959, at 10:00 A.M.

[fol. 59] IN SUPERIOR COURT OF VENTURA COUNTY

Thursday, February 26, 1959. 10:00 O'Clock A.M.

FURTHER TRIAL

Trial of the above entitled cause is resumed at this time, with the District Attorney, defendant, with her counsel, jury and alternate jurors, present.

Luis Estrada Moya, called by the People, is sworn and testifies.

People's Exhibits No. 7, 8, 23, 9, 10, 20, 21, 4, 3, and 6, heretofore marked for identification, are received in evidence at this time.

At the hour of 12:00 o'clock noon, the jury and alternates are admonished and recess taken until the hour of 1:45 P.M. this date.

1:45 O'Clock P.M.

CR 3220

THE PEOPLE, etc.,

vs.

ELIZABETH ANN DUNCAN, et al.

FURTHER TRIAL

Trial of the above entitled cause is resumed at this time, [fol. 60] with the District Attorney, defendant, with her counsel, jury and alternates, present.

Luis Estrada Moya resumes the stand for further cross examination.

The District Attorney's motion to strike a certain protion of Mr. Moya's testimony is granted.

Virgil L. Payton, called by the prosecution, is sworn and testifies.

A map of Ventura county is marked as People's Exhibit No. 28 for identification.

Photograph of shoulder of highway showing white marker is marked as People's Exhibit No. 29 and thereafter received in evidence.

Photograph of curve of highway, with station wagon on left and sheriff's car in rear center, is received as People's Exhibit No. 30.

Photograph of group of men standing to left of highway is received as People's Exhibit No. 31.

Photograph of body partially covered with soil is received as People's Exhibit No. 32.

Another photograph of body in hole is received as People's Exhibit No. 33.

A gold wedding band is marked as People's Exhibit No. 34 for identification.

A pair of pajama shorts is marked as People's Exhibit No. 35 for identification.

[fol. 61] A lady's bath robe is marked as People's Exhibit No. 36 for identification.

A dental chart of the mouth of Olga Duncan is marked as People's Exhibit No. 37 for identification.

Dr. D. Gordon Johnston, called by the prosecution, is sworn and testifies.

Photograph of skull of Olga Duncan is marked as People's Exhibit No. 38 for identification and thereafter received in evidence.

Another photograph of same skull is marked as People's Exhibit No. 39 for identification and thereafter received in evidence.

Another photograph of Olga Duncan's head is marked as People's Exhibit No. 40 for identification, but is withdrawn after an objection is made by defense counsel.

Dr. Richard J. Pagett, called by the People, is sworn and testifies.

A portion of Dr. Pagett's testimony is stricken on motion of Mr. Sullivan.

Dr. Don C. Bittleston, called by the District Attorney, is sworn and testifies.

Sylvia Mary Butler, called by the People, is sworn and testifies.

People's Exhibits No. 36 and 34, heretofore marked for identification, are received in evidence at this time.

Augustine Baldonado, called by the prosecution, is sworn [fol. 62] and testifies.

People's Exhibit No. 28, heretofore marked for identification, is received in evidence,

People's Exhibit No. 37, heretofore marked for identification, as received in evidence.

At the hour of 4:10 P.M., the jury and alternates are admonished and a recess taken until February 27, 1959, at 10:00 A.M.

[fol. 63] In Superior Court of Ventura County

Friday, February 27, 1959. 10:00 O'Clock A. M.

Further Trial

Trial of the above entitled cause is resumed at this time, with the District Attorney, defendant, with her counsel, members of the jury and alternate jurors, present.

Out of hearing of the jury, counsel discuss the subject matter of certain jurors' statements to the District Attorney and Mr. Sullivan during Court recesses.

Esperanza Esquivel, called by the People, is sworn and testifies.

People's Exhibits No. 2 and 5, heretofore marked for identification, are received in evidence.

At this time respective counsel stipulate that the Dyer Act is driving of a stolen automobile across the state line.

At the hour of 12:00 o'clock noon, the jury and alternates are admonished and a recess taken until the hour of 1:45 P.M. this date.

[fol. 64] 1:45 O'Clock P.M.

CR 3220

THE PEOPLE, etc.,

vs.

ELIZABETH ANN DUNCAN, et al.

FURTHER TRIAL

Trial of the above entitled cause is resumed at this time, with the District Attorney, defendant, with her counsel, jury and alternate jurors, present.

Harold Cohen, called by the People, is sworn and testifies.

People's Exhibit No. 18, heretofore marked for identification, is received in evidence.

Copy and original loan report from Mr. Cohen's place of business are received collectively as People's Exhibit No. 41.

A pawn ticket for $150, dated 9/12/58 and signed by Betty Duncan, is received as People's Exhibit No. 42.

Frank W. Haywood, John William Vohol and Emma Ann Short, called by the prosecution, are sworn and testify.

A portion of Mrs. Short's testimony is stricken on motion of defense counsel.

People's Exhibits No. 15, 16 and 17, heretofore marked for identification, are received in evidence.

Mr. Sullivan's motion to strike a portion of the testimony of Mrs. Short is granted.

People's Exhibit No. 22, heretofore marked for identi- [fol. 65] fication, is received in evidence.

A portion of Mrs. Short's testimony is stricken on motion of defense counsel.

Pieces of black wallet are received collectively as People's Exhibit No. 43.

People's Exhibit No. 19, heretofore marked for identification, is received in evidence.

Defense counsel's motion to strike portion of Mrs. Short's testimony is granted.

George M. Vernor, called by the District Attorney, is sworn and testifies.

A group of (9) records of telephone calls by defendant to San Francisco is received as People's Exhibit No. 44.

At the hour of 4:00 P.M., a recess is taken until the 2nd day of March, 1959, at 10:00 A.M., after the jury and alternates are duly admonished.

[fol. 66] IN SUPERIOR COURT OF VENTURA COUNTY

Monday, March 2, 1959. 10:00 O'Clock A. M.

FURTHER TRIAL.

Trial of the above entitled cause is resumed at this time, with the District Attorney, defendant, with her counsel S. Ward Sullivan, the jury and alternate jurors, present.

Dr. Lee Gray, called out of order by the prosecution, is sworn and testifies.

Emma Ann Short, heretofore sworn, resumes the stand for further direct examination.

Counsel approach the bench where Mr. Sullivan makes an offer of proof.

Certain portions of Mrs. Short's testimony is stricken on motion of defense counsel.

At the hour of 12:00 o'clock noon, the jury and alternates are duly admonished and a recess taken until the hour of 2:00 P.M. this date.

[fol. 67] 2:00 O'Clock P.M.

CR 3220

THE PEOPLE, etc.,

vs.

ELIZABETH ANN DUNCAN, et al.

FURTHER TRIAL

Trial of the above entitled cause is resumed at this time, with the District Attorney, defendant, with her counsel, jury and alternates, present.

Emma Ann Short resumes the stand for further cross-examination.

Defense counsel's motion to strike certain portions of Mrs. Short's testimony is granted.

At the hour of 4:00 P.M., the jury and alternates are admonished and a recess taken until March 3, 1959, at 10:00 A.M.

[fol. 68] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF VENTURA

DECLARATION IN SUPPORT OF MOTION FOR THE PRODUCTION OF STATEMENTS MADE BY DEFENDANT—Filed March 3, 1959

STATE OF CALIFORNIA,
County of Ventura, ss:

Elizabeth Ann Duncan says:

That she is one of the defendants in the above-entitled action; that the offense charged in the Indictment on file herein allegedly occurred on or about November 17, 1958; that on or after the 13th day of December, 1958, defendant had one or more conversations with law enforcement officials, agents or other persons working in connection with said law enforcement officials or agents; that the aforesaid conversations took place either within the County of Santa Barbara, State of California, and/or the County of Ventura, State of California; that your declarant is informed and believes that memorandums, notes, transcriptions, re-

cordings or other records of said conversations were made or preserved by law enforcement officials or agents; or [fol. 69] other persons working in connection with law enforcement officials or agents; that your declarant is informed and believes that said memorandums, notes, transcriptions, recordings or other records are in the possession of or under the control of or are accessible to the District Attorney's office of the County of Ventura; that your declarant can neither recall nor relate to her attorney the exact substance or content of said conversations; that each, every and all of the memorandums, notes, transcriptions, recordings or other records concerning said conversations are necessary for the proper defense of this action.

Wherefore, your declarant prays the Court to make its Order directing Roy Gustafson, District Attorney of the County of Ventura, to make said memorandums, notes, transcriptions, recordings or other records available to your declarant's attorney, S. Ward Sullivan, and further to provide said attorney the opportunity and right to make copies thereof.

I declare under penalty of perjury the foregoing is true and correct.

Executed at Ventura, California, this 2nd day of March, 1959.

Elizabeth Ann Duncan, Declarant.

[fol. 70] In Superior Court of Ventura County

Tuesday, March 3, 1959. 10:00 O'Clock A.M.

Further Trial

Trial of the above entitled cause is resumed at this time, with the District Attorney, defendant, with her counsel, jury and alternates, present.

Emma Ann Short resumes the stand for further cross-examination.

Ralph William Winterstein, heretofore sworn, is recalled for further direct examination by the District Attorney.

Counsel approach the bench, where Mr. Sullivan's motion for an order for the District Attorney to furnish

defense counsel with certain statements made by defendant is granted.

At request of the District Attorney, and good cause appearing therefor, it is by the Court ordered that a bench warrant issue for the arrest of Helen Franklin, with bail set in the amount of $10,000.00.

Thomas B. Osborne, called by the prosecution, is sworn and testifies.

At the hour of 12:00 noon, the jury and alternates are [fol. 71] admonished and a recess taken until the hour of 1:45 P.M. this date.

1:45 O'Clock P.M.

CR 3226

THE PEOPLE, etc.,

vs.

ELIZABETH ANN DUNCAN, et al.

FURTHER TRIAL

Trial of the above entitled cause is resumed at this time, with the District Attorney, defendant, with her counsel, jury and alternate jurors, present.

Gladys Ruth Cline, called by the District Attorney, is sworn and testifies.

Defense counsel's motion to strike a portion of Mrs. Cline's testimony is granted.

Notes, dated Jan. 22-59, 6:00 P.M., signed by Gladys R. Cline, on a slip of white paper, are received as People's Exhibit No. 45.

Barbara L. Edwards, called by the prosecution, is sworn and testifies.

Counsel stipulate as to certain dates as to the activities of Rudolph Romero.

Julia Ellen Price, called by the People, is sworn and testifies.

People's Exhibit No. 1, heretofore marked for identification, is received in evidence.

Barbara Jean Reed, heretofore sworn, is recalled for [fol. 72] the purpose of further cross-examination by Mr. Sullivan.

Counsel stipulate that Luis Moya knew Mrs. Reed as "Bobbie".

Augustine Baldonado is recalled for further cross-examination by defense counsel.

The People rest.

At the hour of 4:06 P.M., the jury is admonished, along with the alternates, and a recess is taken until March 4, 1959, at 10:00 A.M.

[fol. 73] In Superior Court of Ventura County

Wednesday, March 4, 1959. 10:00 O'Clock A.M.

Further Trial

Trial of the above entitled cause is resumed at this time, with the District Attorney, defendant, with her counsel, jury and alternate jurors present.

Elizabeth Ann Duncan, called by her attorney, is sworn and testifies.

Certain portions of Mrs. Duncan's testimony are stricken on motion of the District Attorney.

At the hour of 12:00 o'clock noon, the jury and alternates are duly admonished and a recess taken until the hour of 2:00 P.M. this date.

2:00 O'Clock P.M.

CR 3220

The People, etc.,

vs.

Elizabeth Ann Duncan, et al.

Further Trial

Mrs. Duncan resumes the stand for further direct examination.

[fol. 74] Portions of Mrs. Duncan's testimony are stricken on motion of the District Attorney.

At the hour of 4:30 P.M., the jury and alternates are admonished and a recess taken until March 5, 1959, at 10:00 A.M.

[fol. 75] In Superior Court of Ventura County

Thursday, March 5, 1959. 10:00 O'Clock A. M.

Further Trial

Trial of the above entitled cause is resumed at this time, with the District Attorney, defendant, with her counsel, jury and alternate jurors present.

Elizabeth Ann Duncan resumes the stand for further direct examination.

On motion of the District Attorney, certain portions of Mrs. Duncan's testimony are stricken.

In the absence of the jury and alternates, counsel discuss points of law.

The jury and alternates return and Mrs. Duncan resumes the stand for further cross-examination.

A check in the sum of $200, dated Nov. 18, 1958, drawn on the Security-First National Bank of L.A., Santa Barbara Branch, to "cash" by Frank Duncan, is received as People's Exhibit No. 46.

A portion of Mrs. Duncan's testimony is stricken on motion of the District Attorney.

[fol. 76] At 12:00 o'clock noon, the jury and alternates are duly admonished and a recess taken until the hour of 2:00 P.M. this date.

2:00 O'Clock P.M.

CR 3220

The People, etc.,

vs.

Elizabeth Ann Duncan, et al.

Further Trial

Trial of the above entitled cause is resumed at this time, with the District Attorney, defendant, with her counsel, jury and alternates present.

Mrs. Duncan resumes the stand for further cross-examination.

Ventura County Superior Court file No. D 47037 (Leonard Joseph Sollenne vs Elizabeth Ann Duncan Sollenne, is received as People's Exhibit No. 47.

Photograph of woman's quarters, with bench on left, of Ventura County jail, is received as People's Exhibit No. 48.

Photograph of same facility, with bars on right, is received as People's Exhibit No. 49.

Portions of Mrs. Duncan's testimony are stricken on motion of the District Attorney.

Photograph of Mrs. Duncan's jail cell is received as [fol. 77] People's Exhibit No. 50.

Photograph of Mrs. Duncan's jail cell is received as People's Exhibit No. 50.

Portion of Mrs. Duncan's testimony is stricken on motion of the District Attorney.

Complaint for Annulment, summons, affidavit of service and judgment of annulment (certified copies thereof) in Los Angeles Superior Court file No. D 480557 (Frank Duncan vs Betty Duncan) is received as People's Exhibit No. 51.

Certified copy of death certificate of Frank M. Low, Jr., dated Sept. 19, 1932, is received as People's Exhibit No. 52.

Certified copy of marriage certificate of Frank M. Low, Jr. and Hazel Sinclare Nye, filed July 13, 1928, Los Angeles County No. 28-016178, is received as People's Exhibit No. 53.

At the hour of 4:30 P.M., the jury and alternates are duly admonished and a recess taken until March 6, 1959, at 10:00 A.M.

[fol. 78] In Superior Court of Ventura County

Order Striking Certain Testimony

Yesterday the defendant testified that the defendant's son, Frank Duncan, was born November 7, 1928, in Santa Barbara. She then testified that from that time until December 13, 1958, except for the times mentioned by her, her son lived with her.

The District Attorney then asked the defendant whether her son lived with her during the times she was married

to Frank Craig, Harry Irwin, Joseph Gold, George Satriano, Benjamin Cogbill, Stephen Gillis and Leonard Sollene. I now instruct you that you are to disregard those questions and any answers given. The questions and answers are hereby stricken from the record. Whether the defendant was married to any or all of the persons just named is immaterial to the guilt or innocence of the defendant in this case. You are not to speculate about the marital status of the defendant during this period because, whatever it was, it has no bearing on the issues of this phase of this trial.

Furthermore, the defendant testified that she is 54 years old and was born April 16, 1904, in Kansas City, Missouri. The District Attorney began to question the defendant about whether her true age is 54 years. You are to disregard any such questions and you are also to disregard her testimony as to her age, date of birth and place of birth. All of the questions and answers relating to these items are hereby stricken from the record. These matters are not material to the issues in this case. You are not to speculate about what the facts are on this matter.

[fol. 79] In Superior Court of Ventura County

Friday, March 6, 1959. 10:00 O'Clock A. M.

Further Trial

In the absence of the jury and defendant (in chambers) counsel discuss points of law, whereupon, by leave of Court, the District Attorney withdraws People's Exhibit No. 53 and substitutes copies of complaint for annulment, appearance and stipulation, substitution of attorneys and answer in Ventura County Superior Court file No. D 47037 heretofore received as People's Exhibit No. 47, the latter exhibit also being withdrawn.

Thereafter, trial is resumed with all parties, the jury and alternates present.

At this time, good cause appearing therefor, the Court strikes from the record certain testimony in reference to the marital status and age of defendant.

Elizabeth Ann Duncan thereupon resumes the stand for further cross-examination.

Certain portions of Mrs. Duncan's testimony are stricken on motion of the District Attorney.

[fol. 80] Copy of classified advertisement appearing in Santa Barbara New-Press in reference to responsibility of debts of Frank Duncan is received as People's Exhibit No. 54.

Defense counsel's motion to strike portion of Mrs. Duncan's testimony is denied.

Counsel stipulate that Mr. Sullivan may have a running objection to all questions by the District Attorney on the subject of the "annulment involving Winterstein".

A portion of Mrs. Duncan's testimony is stricken on motion of the District Attorney.

A check in the sum of $100 drawn on the County National Bank and Trust Co., Santa Barbara, dated 8/6/58, and signed by Chas. W. Miller, is received as People's Exhibit No. 55.

A portion of Mrs. Duncan's testimony is stricken on motion of the District Attorney.

At the hour of 12:00 o'clock noon, the jury and alternates are duly admonished and a recess taken until the hour of 2:00 P.M. this date.

2:00 O'Clock P.M.

CR 3220

THE PEOPLE, etc.,

vs.

ELIZABETH ANN DUNCAN, et al.

FURTHER TRIAL

Trial of the above entitled cause is resumed at this time, with the District Attorney, defendant, with her counsel, jury and alternate jurors, present.

[fol. 81] Mrs. Duncan resumes the stand for further cross-examination.

Frank Patrick Duncan, called by defense counsel, is sworn and testifies.

A portion of Mr. Duncan's testimony is stricken on motion of the District Attorney.

At the hour of 4:32 P.M., the jury and alternates are duly admonished and a recess taken until March 9, 1959, at 10:00 A.M.

[fol. 82] In Superior Court of Ventura County

Monday, March 9, 1959. 10:00 O'Clock A.M.

Further Trial

Trial of the above entitled cause is resumed at this time, with the District Attorney, defendant, with her counsel, jury and alternates, present.

Frank Patrick Duncan resumes the stand for further direct examination.

November 19, 1958, edition of Santa Barbara New-Press newspaper is received in evidence as Defendant's Exhibit "A", after being marked for identification only.

Certain portions of Mr. Duncan's testimony are stricken on motion of the District Attorney.

It is stipulated that the Minifon, exhibited to Mr. Duncan is an old-style one.

Defense counsel's motion to strike portion of Mr. Duncan's testimony is denied.

At the hour of 12:00 o'clock noon, the jury and alternates are admonished and a recess taken until the hour of 2:00 P.M. this date.

[fol. 83] 2:00 O'Clock P.M.

CR 3220

The People, etc.,

vs.

Elizabeth Ann Duncan, et al.

Further Trial

Trial of the above entitled cause is resumed at this time, with the District Attorney, defendant, with her counsel, jury and alternates, present.

Frank Patrick Duncan resumes the stand for further cross-examination.

A document titled "General Continuing Guaranty," (Security-First National Bank of Los Angeles) dated Aug. 7, 1958, is received as People's Exhibit No. 56.

The District Attorney's motions to strike certain portions of Mr. Duncan's testimony are granted.

Certified copies of the Court records of case No. 57297, The People vs. Marceano H. Esquivel and case No. 108592, The People, etc., vs. Marcano H. Esquivel and Esparanza R. Esquivel, Santa Barbara County, are offered and received collectively as People's Exhibit No. 57.

At the hour of 4:25 P.M., the jury and alternates are duly admonished and a recess is taken until March 10, 1959, at 10:00 A.M.

In the absence of the jury, defense counsel moves the [fol. 84] Court for a mistrial on the ground stated in the reporter's transcript of the proceedings herein.

Said motion is argued by respective counsel, submitted and by the Court denied.

[fol. 85] In Superior Court of Ventura County

Tuesday, March 10, 1959. 10:00 O'Clock A.M.

Further Trial

Trial of the above entitled cause is resumed at this time, with the District Attorney, defendant, with her counsel, jury and alternates, present.

Out of hearing of the jury, on motion of S. Ward Sullivan, the reporter's transcript for March 9, 1959, on page 2590 at line 8 is corrected to read: "mistrial" in place of and instead of "dismissal"; and at line 11 on the same page the transcript is corrected to read "mistrial" in place of and instead of "new trial".

Counsel stipulate that some applause was heard in the Court room when the Court ruled on the motion for a mistrial on March 9, 1959.

Defendant rests.

The District Attorney at this time requests permission of the Court to re-open his case in chief and said request is by the Court granted.

On motion of the District Attorney, good cause appearing therefor, it is by the Court ordered that the bench [fol. 86] warrant heretofore issued for the arrest of Helen Franklin be and the same is hereby recalled.

By leave of Court the District Attorney calls some of his rebuttal witnesses prior to reopening of his case.

Dr. George A. Weston and Genevieve Miller, called in rebuttal by the People, are sworn and testify.

A portion of Mrs. Miller's testimony is stricken on motion of defense counsel.

Patricia V. Hamilton, called by the District Attorney in rebuttal, is sworn and testifies, and portions of her testimony are stricken on motion of Mr. Sullivan.

George M. Vernor, heretofore sworn, is recalled in rebuttal by the People.

Record of telephone call of Nov. 12, 1958, by defendant is marked as People's Exhibit No. 58 for identification.

Evelyn Hope Clarke, Dwight Gilmour, Paul K. Davis, Una Clapp, called by the People in rebuttal, are sworn and testify.

Dorothea Barnett, heretofore sworn, is recalled in rebuttal by the prosecution.

Charles H. Lynch and Lawrence E. Weitkamp, called by the District Attorney in rebuttal, are sworn and testify.

On motion of defense counsel, a portion of Mr. Weitkamp's testimony is stricken.

Memo by Mr. Weitkamp in reference to wager with Frank Duncan is received as People's Exhibit No. 59.

[fol. 87] Alice Fraker and Sara Contreras, called by the prosecution in rebuttal, are sworn and testify.

Mr. Sullivan moves to strike all of the testimony of Mrs. Contreras, whereupon, counsel, out of hearing of the jury, discuss points of law, and thereafter said motion to strike is denied.

At the hour of 12:00 o'clock noon, the jury and alternates are admonished and a recess taken until the hour of 2:00 P.M. this date.

2:00 O'Clock P.M.

CR 3220

THE PEOPLE, etc.,

vs.

ELIZABETH ANN DUNCAN, et al.

FURTHER TRIAL

Trial of the above entitled cause is resumed at this time, with the District Attorney, defendant, with her counsel, jury and alternates present.

The District Attorney re-opens his case in chief and calls Helen Franklin, who is sworn and testifies.

Defense counsel's motion to strike a portion of Mrs Franklin's testimony is granted.

Counsel discuss points of law out of hearing of the jury.

Emma Ann Short, Esperanza Esquivel and Leonard E. Peck, heretofore sworn, are recalled in rebuttal by the prosecution.

Sally Diantha Libke, called in rebuttal by the People, is sworn and testifies.

[fol. 88] On motion of Mr. Sullivan, a portion of Miss Libke's testimony is stricken.

George W. Crawford and Charles R. Thompson, called by the District Attorney, in rebuttal, are sworn and testify.

Thomas B. Osborne, heretofore sworn, is recalled in rebuttal by the People.

Valentine Ponomaroff, called by the prosecution in rebuttal, is sworn and testifies.

A portion of Mr. Ponomaroff's testimony is stricken on motion of defense counsel.

At this time, the Court orders the witness to answer a certain question in reference to an insurance application.

Certain portion of Mr. Ponomaroff's testimony is stricken on motion of Mr. Sullivan.

At the hour of 4:33 P.M., the jury and alternates are duly admonished and a recess taken until the 11th day of March, 1959, at 10:00 A.M.

[fol. 89] IN SUPERIOR COURT OF VENTURA COUNTY

Wednesday, March 11, 1959. 10:00 O'Clock A.M.

FURTHER TRIAL

Trial of the above entitled cause is resumed at this time, with the District Attorney, defendant, with her counsel, jury and alternates present.

People's Exhibit No. 58, heretofore marked for identification is received in evidence.

Counsel stipulate that Rudolph Romero was arrested on Aug. 14, 1958, and released on Sept. 23, 1958.

Valentine Ponomaroff resumes the stand for further direct examination.

Certain portions of Mr. Ponomaroff's testimony are stricken on motion of defense counsel.

Patricia V. Hamilton, heretofore sworn, is recalled in rebuttal.

On motion of Mr. Sullivan, a portion of Mrs. Hamilton's testimony is stricken.

Angelo Brombal, called in rebuttal by the People, is sworn and testifies.

The People rest.

[fol. 90] Defendant rests.

The District Attorney begins his opening argument to the jury, whereupon, at the hour of 12:04 P.M., the jury and alternates are duly admonished and a recess taken until the hour of 1:45 P.M. this date.

1:45 O'Clock P.M.

CR 3220

THE PEOPLE, etc.,

vs.

ELIZABETH ANN DUNCAN, et al.

FURTHER TRIAL

Trial of the above entitled cause is resumed at this time, with the District Attorney, defendant, with her counsel, jury and alternates present.

The District Attorney continues with his opening argument to the jury.

At the hour of 4:35 P.M., the jury and alternates are duly admonished and a recess taken until March 12, 1959, at 10:00 A.M.

[fol. 91] IN SUPERIOR COURT OF VENTURA COUNTY

Thursday, March 12, 1959. 10:00 O'Clock A.M.

FURTHER TRIAL

Trial of the above entitled cause is resumed at this time, with the District Attorney, defendant, with her counsel, jury and alternate jurors present.

The District Attorney concludes his opening argument to the jury and at the hour of 12:06 P.M., the jury and alternates are duly admonished and a recess taken until the hour of 2:00 P.M. this date.

2:00 O'Clock P.M.

THE PEOPLE, etc.,

CR 3220

vs.

ELIZABETH ANN DUNCAN, et al.

FURTHER TRIAL

Trial of the above entitled cause is resumed at this time, with the District Attorney, defendant, with her counsel, jury and alternates, present.

S. Ward Sullivan, counsel for defendant, begins his argument to the jury and at the hour of 4:30 P.M., the jury and alternates are duly admonished and a recess taken until [fol. 92] March 13, 1959, at 10:00 A.M.

[fol. 93] IN SUPERIOR COURT OF VENTURA COUNTY

Friday, March 13, 1959. 10:00 O'Clock A.M.

FURTHER TRIAL

Trial of the above entitled cause is resumed at this time, with the District Attorney, defendant, with her counsel, jury and alternates, present.

Defense counsel concludes his argument to the jury, whereupon, the District Attorney commences his closing summation of the cause.

At the hour of 12:05 P.M., the jury and alternates are duly admonished and a recess is taken until the hour of 1:45 P.M. this date.

1:45 O'Clock P.M.

CR 3220

THE PEOPLE, etc.,

vs.

ELIZABETH ANN DUNCAN, et al.

FURTHER TRIAL

Trial of the above entitled cause is resumed at this time, with the District Attorney, defendant with her counsel, jury and alternate jurors present.

The District Attorney concludes his closing argument to the jury and at the hour of 2:48 P.M., the jury and [fol. 94] alternates are duly admonished and a recess taken until March 16, 1959, at 10:00 A.M.

[fol. 95] IN SUPERIOR COURT OF VENTURA COUNTY

Monday, March 16, 1959. 10:00 O'Clock A.M.

FURTHER TRIAL

Trial of the above entitled cause is resumed at this time, with the District Attorney, defendant, with her counsel, jury and alternate jurors present.

The Court instructs the jury and alternates and at the hour of 10:34 A.M., the bailiffs are sworn and the jury retires to consider its verdict.

The alternate jurors are taken in charge of a bailiff to a room provided for such purpose.

At the hour of 4:58 the jury and alternates return to Court.

4:58 O'Clock P.M.

CR 3220

THE PEOPLE, etc.,

vs.

ELIZABETH ANN DUNCAN, et al.

FURTHER TRIAL

Trial of the above entitled cause is resumed at this time, with the District Attorney, defendant, with her counsel, jury and alternate jurors present.

[fol. 96] The Court inquires of the jury if they have agreed upon a verdict and the jury states through its foreman that they have agreed upon a verdict, as follows, to-wit:

(It is stipulated that the verdict may be read back by the Clerk before it is recorded.)

"In the Superior Court of the State of California, in and for the County of Ventura

No. CR 3220

The People of the State of California, Plaintiff,

vs.

Elizabeth Ann Duncan, Luis Estrada Moya and Augustine Baldonado, Defendants

Verdict

We the jury impaneled to try the above-entitled cause find the defendant, Elizabeth Ann Duncan, Guilty of murder in the first degree.

Dated this 16 day of March, 1959.

Paul Gosney, Foreman of the Jury."

The jury is polled, whereupon each juror states that said verdict is his verdict.

At the hour of 5:02 P.M., the jury and alternates are duly admonished and excused until March 17, 1959, at 10:00 A.M. at which time trial as to the penalty issue will begin.

[fol. 97] In the Superior Court of the State of California, in and for the County of Ventura

No. CR-3220

The People of the State of California, Plaintiff,

vs.

Elizabeth and Duncan, Luis Estrada Moya and Augustine Baldonado, Defendants

Verdict—March 16, 1959

We the jury impaneled to try the above-entitled cause find the defendant, Elizabeth Ann Duncan, Guilty of murder in the first degree.

Dated this 16 day of March, 1959.

Paul Gosney, Foreman of the Jury.

[fol. 98] IN SUPERIOR COURT OF VENTURA COUNTY

Tuesday, March 17, 1959. 10:00 O'clock A.M.

FURTHER TRIAL ON PENALTY ISSUE.

Trial on the penalty issue in the above entitled cause comes regularly on at this time, with the District Attorney, defendant, with her counsel, jury and alternates present.

The District Attorney makes an opening statement to the jury and alternates, whereupon, Edward Joseph Murphy is sworn and testifies on behalf of the People.

Certified copies of commitment papers, minute orders in San Francisco Municipal Court cases No. 957273 and 957274, and clerk's certification of prostitution ordinance Bill No. 4686, San Francisco City and County, are received collectively as People's Exhibit No. 60.

Certified copy of marriage certificate of Benjamin Young Cogbill and Elizabeth Ann Duncan, dated July 28, 1953, recorded in Book 334, at page 367, No. 3091 Alameda County, California, official records, is received as People's Exhibit No. 61.

At the request of a juror (Hans Gramckos) the testimony of Officer Murphy is read back by the Official Court Reporter.

[fol. 99] William Roger Wilson and Leonard Joseph Sollenne, called by the People, are sworn and testify.

Certified copy of marriage certificate of Leonard Joseph Sollenne and defendant, of Aug. 12, 1957, recorded in book 1184 at page 189, San Francisco City and County official records, is received at People's Exhibit No. 62.

Dr. George A. Weston and Patricia Robinson, called by the District Attorney, are sworn and testify.

Defense counsel's motion to strike certain portion of Miss Robinson's testimony is by the Court denied.

Aniello Renga, called by the prosecution, is sworn and testifies.

A motion by Mr. Sullivan to strike a portion of Mr. Renga's testimony is denied.

Portions of Mr. Ringa's testimony are stricken on motion of defense counsel.

At the hour of 12:00 o'clock noon, the jury and alternates are duly admonished and a recess taken until the hour of 2:00 P.M. this date.

2:00 O'Clock P.M.

CR 3220

THE PEOPLE

vs.

ELIZABETH ANN DUNCAN, et al.

FURTHER TRIAL

Trial on the issue of penalty in the above entitled cause is resumed at this time, with the District Attorney, defendant, with her counsel, jury and alternates present.

[fol. 100] Mr. Renga resumes the stand for further cross-examination.

J. V. Wood, called by the District Attorney, is sworn and testifies.

Defense counsel's motion to strike all of the testimony of Mr. Renga and Mr. Wood is by the Court denied.

Vincent E. Wood, called by the People, is sworn and testifies.

A document titled "Car Order", dated January 7, 1948, and signed by Elizabeth Ann Craig, is received as People's Exhibit No. 63.

A Bank of America, Ventura branch, dated Mch 18th 1948 for $200, to Vincent E. Wood, and signed by Elizabeth Ann Craig, check, is received as People's Exhibit No. 64.

Certified copy of marriage certificate of Frank Leslie Craig and Elizabeth Hazel Low, filed Mar 27, 1933, Ventura County Recorder's Office, is received as People's Exhibit No. 65.

Mr. Wood (Vincenet E.) is recalled by the People for further direct examination.

Copies of certain documents in file No. 24416, Santa Barbara County Superior Court, titled "Elizabeth Hazel Low Craig vs. Frank Leslie Craig" are received collectively as People's Exhibit No. 66.

California State Board of Equalization identification card No. 3227, Santa Barbara office, dated May 9, 1947, of [fol. 101] Betty Ann Sasso, is marked as People's Exhibit No. 67 for identification.

Counsel stipulate that signature on said exhibit marked for identification is defendant's.

Tony Sasso, called by the People, is sworn and testifies.

Certain portion of Mr. Sasso's testimony is stricken on motion of Mr. Sullivan.

People's Exhibit No. 67, heretofore marked for identification, is received in evidence and pursuant to stipulation, a photostatic copy thereof is substituted therefor.

Robert P. D'Amato, called by the prosecution, is sworn and testifies.

Photostatic copies of certain documents in Los Angeles Superior Court file No. 0510763, titled Cathy D'Amato vs. Luigi D'Amato, are received collectively as People's Exhibit No. 68.

It is stipulated that signature appearing on said Exhibit 68 is that of the defendant.

Bettye Lou Brantley, called by the People, is sworn and testifies.

A portion of Mrs. Brantley's testimony is stricken on motion of Mr. Sullivan.

Exemplified copy of marriage certificate of Dewey A. Tessier and Hazel E. Mitchell of Aug. 24, 1918, is received in evidence as People's Exhibit No. 69.

Certified copy of birth certificate of Dewey Tessier, [fol. 102] dated Jan. 4, 1924, is received as People's Exhibit No. 70.

On motion of the District Attorney, good cause appearing therefor, the Clerk is ordered to produce Juvenile File No. 5259 at this time.

At the hour of 4:30 P.M., the jury and alternates are duly admonished and a recess taken until Mar. 18, 1959, at 10:00 A.M.

[fol. 103] IN SUPERIOR COURT OF VENTURA COUNTY

Wednesday, March 18, 1959. 10:00 O'Clock A.M.

FURTHER TRIAL

Trial as to the penalty issue in the above entitled cause is resumed at this time, with the District Attorney, defendant, with her counsel, jury and alternates present.

Betty Lou Branley resumes the stand for further cross-examination.

Thomas Paul Hood, called by the People, is sworn and testifies.

On motion of defense counsel, a portion of Mr. Hood's testimony is stricken.

A. P. Williams, called by the District Attorney, is sworn and testifies.

A deposit receipt for $50,000.00, dated Apr 16, 1952, to Elizabeth Ann Satriano and Frank P. Duncan, is received as People's Exhibit No. 71.

A Bank of America check for $50,000.00, dated 4/16/1952, signed by Elizabeth Satriano, is received as People's Exhibit No. 72.

Mr. Sullivan's motion to strike a portion of Mr. Williams' [fol. 104] testimony is denied, and thereafter his same motion is granted.

Richard E. Corrick, called by the People, is sworn and testifies.

A. P. Williams is recalled at this time for further direct examination.

A portion of Mr. Williams' testimony is stricken on the Court's own motion.

George Satriano, called by the District Attorney, is sworn and testifies.

Certified copy of marriage certificate of George Satriano and Elizabeth Ann Gold, dated Dec. 15, 1951, is received as People's Exhibit No. 73.

Certified copy of Final Judgment of Divorce of defendant and George Satriano, File No. 422822, Superior Court, City and County of San Francisco, is received as People's Exhibit No. 74.

Photostatic copies of certain documents in case No. 422822 Superior Court, City and County of San Francisco, titled "Elizabeth Satriano vs George Satriano," are received collectively as People's Exhibit No. 75.

At the hour of 12:02 P.M., the jury and alternates and duly admonished and a recess taken until the hour of 1:45 P.M. this date.

1:45 O'Clock P.M.

[fol. 105] CR 3220

THE PEOPLE, etc.,

vs.

ELIZABETH ANN DUNCAN, et al.

FURTHER TRIAL

Trial as to the penalty issue in the above entitled cause is resumed at this time, with the District Attorney, defendant, with her counsel, jury and alternates present.

George Satriano resumes the stand for further cross-examination.

Dr. Edward John Buckley, called by the People, is sworn and testifies.

Photostatic copy of statement of Dr. Buckley of Mar. 29, 1956, re "pregnancy of Mrs. Elizabeth Gillis" is marked as People's Exhibit No. 76 for identification.

Stephen S. Gillis, called by the District Attorney, is sworn and testifies.

Photostatic copy of marriage certificate of Stephen [illegible]s Gillis and Elizabeth Ann Duncan, dated Jan., 6, 1954, is received as People's Exhibit No. 77.

Certain portions of Mr. Gillis' testimony are stricken on motion of defense counsel.

People's Exhibit No. 76, heretofore marked for identification, is received in evidence at this time.

Photostatic copy of decree of annulment (Gillis), file No. 447172, San Francisco Superior Court, is received as People's Exhibit No. 78.

Portions of Mr. Gillis' testimony are stricken on motion [fol. 106] of Mr. Sullivan.

Copy of marriage certificate of Joseph Gold and Elizabeth Ann Lowe, dated Oct. 6, 1950, is received as People's Exhibit No. 79.

Copy of marriage certificate of Frank Mathias Low, Jr. and Hazel Sinclara Nye, of July 12, 1928, is received as People's Exhibit No. 80.

Copy of marriage certificate of Frank P. Duncan and Hazel E. Nigh, dated April 24, 1932, is received as People's Exhibit No. 81.

Copy of marriage certificate of Edward J. Lynchberg and Hazel Elizabeth Nigh, of July 30, 1937, is received as People's Exhibit No. 82.

Copy of decree of annulment of Elizabeth A. Cogbill and Benjamin Y. Cogbill, file No. 430487, Superior Court, San Francisco, dated Oct. 30, 1953, is received as People's Exhibit No. 83.

Copy of final judgment of divorce of defendant and Joseph Gold, dated Nov. 19, 1951, is received as People's Exhibit No. 84.

Copy of birth certificate of Hazel Elizabeth Tessier, dated Apr. 24, 1922, is received as People's Exhibit No. 85.

Copy of birth certificate of Dorothy May Tessier, dated Jan. 19, 1921, is received as People's Exhibit No. 86.

The People rest.

Elizabeth Ann Duncan, heretofore sworn, is recalled and [fol. 107] testifies on her own behalf.

Certain portions of Mrs. Duncan's testimony are stricken on motion of the District Attorney.

At the hour of 4:28 P.M., the jury and alternates are duly admonished and a recess taken until March 19, 1959, at 9:30 A.M.

[fol. 108] IN SUPERIOR COURT OF VENTURA COUNTY

Thursday, March 19, 1958. 10:00 O'Clock A.M.

FURTHER TRIAL

Trial on the issue of penalty in the above entitled cause is resumed at this time, with the District Attorney, defendant, with her counsel, jury and alternates, present.

Elizabeth Ann Duncan resumes the stand for further direct examination.

The District Attorney's motion to strike a certain portion of Mrs. Duncan's testimony is by the Court denied, whereupon, certain portions of her testimony are stricken by stipulation.

At the hour of 12:00 o'clock noon, the jury and alternates are duly admonished and a recess taken until the hour of 1:45 P.M. this date.

1:45 O'Clock P.M.

CR 3220

THE PEOPLE, etc.,

vs.

ELIZABETH ANN DUNCAN, et al.

FURTHER TRIAL

Trial of the above cause on the issue of penalty is resumed at this time, with the District Attorney, defendant, [fol. 109] with her counsel, members of the jury and alternates present.

Mrs. Duncan resumes the stand for further cross examination.

The witness invokes the fifth ammendment as to certain questions by the District Attorney and refuses to answer.

Frank Patrick Duncan, heretofore sworn, is recalled on behalf of the defendant.

Bettye Lou Brantley at this time waives the attorney-client privileged communication rule.

On motion of the District Attorney, the Clerk is ordered to produce files A-2083-A, A-2083-B and A-2084-A.

Counsel stipulate that signature on certain adoption papers is that of Mrs. Brantley.

Dr. Louis R. Nash, called by defense counsel, is sworn and testifies.

By leave of Court, Joseph Sasso, is called out of order in rebuttal and is sworn and testifies on behalf of the People.

A portion of Mr. Sasso's testimony is stricken on motion of Mr. Sullivan.

At the hour of 4:35 P.M., the jury and alternates are admonished and a recess taken until March 20, 1959, at 10:00 A.M.

[fol. 110] IN SUPERIOR COURT OF VENTURA COUNTY

Friday, March 20, 1959. 10:00 O'Clock A.M.

FURTHER TRIAL

Trial as to the penalty issue in the above entitled cause is resumed at this time, with the District Attorney, defendant with her counsel, jury and alternate jurors present.

Dr. Brunon Bielinski, called by the defense, is sworn and testifies.

Defendant rests.

Loyal Dwight Frazier, called by the People in rebuttal, is sworn and testifies.

Bettye Lou Brantley, heretofore sworn, is recalled in rebuttal by the prosecution.

Certain portions of Mrs. Brantley's testimony are stricken on motion of defense counsel.

A statement dated Sept. 25, 1956, in re adoption of her children, signed by Bettye Lou Brantley, is marked as defendants' exhibit "B" for identification.

It is stipulated that said document is not a legal adoption consent, and it is thereafter received in evidence.

Three sheets of yellow paper, with names and dates [fol. 111] written on same, are marked collectively as defendants' exhibit "C" for identification and thereafter received in evidence.

The People rest.

Defendant rests.

The District Attorney begins his summation to the jury and at the hour of 12:00 o'clock noon, the jury and alternates are duly admonished and a recess taken until the hour of 1:30 P.M. this date.

1:30 O'Clock P.M.

CR 3220

THE PEOPLE, etc.,

vs.

ELIZABETH ANN DUNCAN, et al.

FURTHER TRIAL

Trial on the penalty issue in the above cause is resumed at this time, with the District Attorney, defendant, with her counsel, jury and alternates present.

Respective counsel conclude their arguments to the jury, the Court instructs the jury and at the hour of 4:31 P.M., the jury retires in charge of the bailiffs to consider its verdict. The jury returns into Court at the hour of 9:27 P.M.

9:27 O'Clock P.M.

CR 3220

THE PEOPLE, etc.,

vs.

ELIZABETH ANN DUNCAN, et al.

FURTHER TRIAL

Trial on the penalty issue in the above cause is resumed at this time, with the District Attorney, defendant, with [fol. 112] her counsel, jury and alternates present.

The Court inquires of the jury if they have agreed upon a verdict and the jury states through its foreman that they have agreed upon a verdict, to-wit:

(It is stipulated that the verdict may be read back before it is recorded.)

"In the Superior Court of the State of California, in and for the County of Ventura

No. CR 3220

The People of the State of California, Plaintiff,

vs.

Elizabeth Ann Duncan, Defendant

Verdict

We the jury impaneled to try the above-entitled cause fix the penalty of the defendant, Elizabeth Ann Duncan, for the murder in the first degree of Olga Duncan at death.

Dated this 20 day of March, 1959.

Paul Gosney, Foreman of the Jury.

The jury is polled by the Clerk and each juror states that said verdict is his or her verdict.

It is stipulated that the matter of the sanity of defendant shall be submitted to the Court on the reports of the Court-appointed psychiatrists.

Defendant, her counsel and the District Attorney there-[fol. 113] upon waive a trial by jury as to the sanity issue, with the understanding, however, that a jury is not waived as to any future matters that might be heard in this cause.

Cause as to sanity issue is continued until March 24, 1959, at 11:00 A.M. whereupon, the jury and alternates are discharged and defendant is remanded to the custody of the Sheriff.

[fol. 114] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF VENTURA

No. CR 3220

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

ELIZABETH ANN DUNCAN, Defendant.

VERDICT ON PENALTY—March 20, 1959

We the jury impaneled to try the above-entitled cause fix the penalty of the defendant, Elizabeth Ann Duncan, for the murder in the first degree of Olga Duncan at death.

Dated this 20th day of March, 1959.

Paul Gosney, Foreman of the Jury.

[fol. 115] REPORTS ON SANITY—Filed March 24, 1959

STATE OF CALIFORNIA

Department of Mental Hygiene
Camarillo State Hospital
Camarillo, California

March 9, 1959.

Honorable Charles F. Blackstock,
Judge of the Superior Court of Ventura County.
Ventura, California.

Re: CR 3218, CR 3220, Elizabeth Ann Duncan

Honorable Sir:

Pursuant to order, I have examined the above named as to her sanity.

My direct examination was carried out on January 7, 8, 19, 20, 21 and 27, and February 5. It included psychiatric, physical and neurological evaluation. In my indirect examination, I interviewed MR. Frank Duncan in the presence of Mrs. Duncan's Attorney, Mr. S. Ward Sullivan,

on February 4, and I was present in Court during the testimony and cross-examination of Mrs. Duncan on March 4, 5, and 6.

I have examined the EEG tracing that was done at this hospital on February 23, and I have studied the report on this EEG and the report on a blood test done by Ventura County Health Department on February 26.

It is my opinion that Mrs. Duncan is presently legally sane and was legally sane at the time of the alleged commission of the offenses charged.

Respectfully submitted, Philip R. A. May, M.D.
Clinical Director.

KA

cc—Mr. S. Ward Sullivan, Attorney, Mr. Roy Gustafson, District Attorney

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[fol. 116] STATE OF CALIFORNIA

Department of Mental Hygiene
Camarillo State Hospital
Camarillo, California

CR 3220

March 9, 1959.

Honorable Chas. F. Blackstock,
Judge of the Superior Court,
County of Ventura—Court House,
Ventura, California.

In re: Elizabeth Ann Duncan

DEAR JUDGE BLACKSTOCK:

In accordance with your order of January 6, 1959 I have completed my psychiatric investigation and examinations of Elizabeth Ann Duncan.

On January 8, January 12, January 17 and January 28, 1959 I interviewed Mrs. Duncan in the Ventura County Jail, and these examinations comprise my direct psychiatric investigation.

In addition, indirect examination consisted of interviewing Mr. Frank Duncan and Mr. S. Ward Sullivan in my office with Dr. Philip R. A. May on February 4, 1959, and also, on March 4, March 5 and March 6, 1959 I was present in Court during the time Mrs. Duncan was on the witness stand.

In addition, I have examined the electroencephalographic tracing that was done at the Camarillo State Hospital on February 23, 1959 and have studied the report submitted to me concerning this tracing.

Further, I also have the report of the serology tests done by the Ventura County Health Department on February 26, 1959.

As a result of these examinations, it is my opinion that Mrs. Elizabeth Ann Duncan is presently sane and was sane at the time of the commission of the alleged offense.

Respectfully submitted, Louis R. Nash, M.D.

LRN:LB

cc: District Attorney, Mr. Roy A. Gustafson, Attorney, Mr. S. Ward Sullivan.

[fol. 117] In Superior Court of Ventura County

Tuesday, March 24, 1959. 9:30 O'Clock A.M.

Finding as to Sanity of Defendant and Motion for New Trial

The District Attorney and defendant Elizabeth Ann Duncan, with her counsel, S. Ward Sullivan, present. Cause comes regularly on at this time for hearing of the sanity issue, all parties hereto having waived a jury for said matter.

Said matter having been submitted to the Court upon the written reports of Doctors Louis R. Nash and Philip R. A. May, Court-appointed psychiatrists, and the Court having fully considered and the same, and being fully advised *advised*, now finds that Elizabeth Ann Duncan was sane at the time of the commission of the offense for which she was convicted.

Defense counsel thereupon moves the Court for a new trial on the grounds stated in the written motion for a new trial filed at this time.

Time for pronouncing judgment and sentence is waived by defendant and her counsel, whereupon, cause is con-
[fol. 118] tinued until April 3, 1959, at 10:00 A.M. for the purpose of hearing arguments on the motion for new trial and for pronouncing judgment and sentence.

On motion of Mr. Sullivan, good cause appearing therefor, Frank Patrick Duncan is associated at this time as defense counsel.

Defendant is remanded.

[fol. 119] [File endorsemenet omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF VENTURA

[Title omitted]

MOTION OF ELIZABETH ANN DUNCAN FOR A NEW TRIAL—Filed March 24, 1959

Comes Now the Defendant, Elizabeth Ann Duncan, above named, and moves this Honorable Court for a new trial of said action upon the following grounds:

I

That the Court erred in decisions on questions of law arising during the course of the trial.

II

That the verdict is contrary to law.

III

That the verdict is contrary to the evidence.

IV

That the Court erred in overruling the objections of the defendant made at the time to the admission of the tes-

mony against the defendant and in admitting said testimony.

V

That the Court erred in sustaining the objections of [fol. 120] the District Attorney to evidence offered by the defendant and in refusing to admit such testimony.

VI

That the Court misdirected the jury on matters of law.

VII

That the Court erred in giving each and every instruction given for the People in said cause.

VIII

That the Court erred in refusing each and every instruction offered by the defendant and refused by the Court.

IX

That the Court erred in modifying all of the instructions submitted and proposed by the defendant which were modified or changed by the Court and thereafter given to the jury.

X

That the District Attorney has been guilty of prejudicial misconduct during the trial before the jury.

XI

That the jury has been guilty of prejudicial misconduct by which a fair and due consideration of the case has been prevented.

XII

That the jury has received evidence out of court, other than that resulting from a view of the premises.

XIII

That the verdict of the jury has been decided by means other than a fair expression of opinion on the part of all the jurors.

XIV

That newly discovered evidence material to the defendant, which she could not, with reasonable diligence, have discovered and produced at the trial.

[fol. 121]

XV

That Defendant, Elizabeth Ann Duncan, has been deprived of life and liberty without due process of law in violation of the provisions of Article 1 Section 13 of the Constitution of the State of California and of the Fourteenth Amendment to the Constitution of the United States of America.

That said motion for a new trial is based upon the records and minutes of the Court taken of and during the hearing on motions for removal of said cause and change of venue, upon the minutes of the court taken of and during said trial, upon the transcript of the evidence and proceedings taken and had in the course of the trial, which were taken down by the Official Reporter, and thereafter transcribed by him, and upon the exhibits admitted in support of the motions for removal of said cause and for change of venue and upon the exhibits admitted in the course of the trial, and upon the instructions offered, refused and given.

Wherefore, defendant Elizabeth Ann Duncan prays that the verdict of guilty heretofore rendered herein be set aside and that she be granted a new trial.

Dated this 24th day of March, 1959.

S. Ward Sullivan, Attorney for Defendant, Elizabeth Ann Duncan.

[fol. 122] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF VENTURA

AFFIDAVIT IN SUPPORT OF MOTION FOR A NEW TRIAL

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Ward Sullivan being first duly sworn deposes and says:

That he is one of the attorneys for the Defendant Elizabeth Ann Duncan in the above entitled matter.

That since the trial of said cause defendant has discovered new evidence material to her cause of action which was unavailable to her until after the verdict herein, in that after such verdict facts were brought forward to defendant by a witness, which facts were theretofore unknown to defendant; that the name of said witness is Augustine Baldonado; that the matters and things to which said witness will testify are contained in the Declaration hereto attached and by express reference made a part of this motion; that the matters and things to which said witness will testify concern the activities of one Esperanza Equivel in re-
[fol. 123] peatedly urging said witness and Luis Moya on several occasions to proceed with the kidnapping of the alleged victim Olga Duncan because said witness and Luis Moya "needed the money;" that said facts as set forth in the aforesaid Declaration will establish that the said Esperanza Equivel would be an accomplice as a matter of law in the commission of the crime charged in the indictment herein, if said crime in fact were committed, and by reason there it would become incumbent upon the trial court to so instruct the jury and to further instruct them that a conviction could not be had upon her uncoroborated testimony.

That defendant could not, with reasonable diligence, have discovered and produced such facts and things at the trial of this cause.

S. Ward Sullivan, Affiant.

Subscribed and sworn to before me this 3rd day of April, 1959.

E. A. Oppenheim, Notary Public in and for said County and State.

[fol. 124] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF VENTURA

DECLARATION IN SUPPORT OF MOTION FOR A NEW TRIAL

Augustine Baldonado says:

That he is one of the defendants in the above entitled action.

That he is personally acquainted with Esperanza Esquivel, one of the persons called as a witness on behalf of the People in the trial of Elizabeth Ann Duncan, one of the above named co-defendants.

That on or about the 13th day of November 1958, the said Esperanza Esquival informed declarant and co-defendant Luis Moya that a Mrs. Duncan wanted to talk to us—that she had a job for us and on said date the said Esperanza Esquivel introduced declarant and the said Luis Moya to Elizabeth Ann Duncan.

That the said Esperanza Esquivel was present at the Tropical Cafe on the 13th day of November 1958 during a part of the conversation had between declarant, Luis Moya [fol. 125] and the said Elizabeth Duncan.

That on at least three different days between the 13th day of November 1958 and the 17th day of November 1958, the said Esperanza Esquival repeatedly urged declarant and the said Luis Moyal to kidnap Olga Duncan by repeatedly stating to us, in substance, the following—"Go ahead and do it." "Why don't you do it today, you boys need the money."

That on the early morning of November 18, 1958, when declarant and Luis Moya returned to the home of the said Esperanza Esquivel, declarant and the said Luis Moya informed the said Esperanza Esquivel that "We parked the car in the driveway," whereupon the said Esperanza Esquivel told us to move the car. Declarant and the said Luis Moya then informed Esperanza Esquivel that they were going to change their clothes before moving the car, to which she replied okey.

I declare under penalty of perjury the foregoing is true and correct.

Executed this 3rd day of April, 1959 at Ventura, California.

Augustine Baldonado, Declarant.

[fol. 126] IN SUPERIOR COURT OF VENTURA COUNTY

Friday, April 3, 1959. 9:30 O'Clock A.M.

ORDER DENYING MOTION FOR NEW TRIAL—April 3, 1959

The District Attorney and defendant, with her counsel, S. Ward Sullivan and Frank P. Duncan, present. Cause comes on at this time for hearing defendant's motion for a new trial.

Said motion is argued by respective counsel, submitted and after due deliberation, the Court denies the motion for a new trial and denies a request to reduce the sentence of defendant to life imprisonment, under the provisions of Section 1181 (7) of the Penal Code.

CR 3220

THE PEOPLE OF THE STATE OF CALIFORNIA,

vs.

ELIZABETH ANN DUNCAN, ET AL.

JUDGMENT ON CONVICTION

District Attorney Roy A. Gustafson and the defendant Elizabeth Ann Duncan, with her counsel S. Ward Sullivan and Frank P. Duncan, are present in Court. The above entitled cause comes regularly on at this time for pronouncing judgment against the defendant.

[fol. 127] The defendant having heretofore been found guilty by a jury of the offense of murder in the first degree, the jury having thereafter fixed the penalty at death and the Court having found the defendant to be sane at the time of the commission of the crime, she is duly arraigned for judgment, shows no legal cause why judgment should not be pronounced against her and it is therefore ordered, adjudged and decreed that the said defendant be punished by being put to death by the administration of a lethal gas.

It is further ordered, adjudged and directed that the said defendant be taken by the Sheriff of the County of Ventura to the California Institution for Woman at Corona, California.

The defendant is remanded to the custody of the Sheriff.

[fol. 128-129] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF VENTURA

CR 3220

Date: April 3, 1959

Judge: Hon. Chas. F. Blackstock

THE PEOPLE OF THE STATE OF CALIFORNIA,

vs.

ELIZABETH ANN DUNCAN, ET AL.,

JUDGMENT ON CONVICTION

District Attorney Roy A. Gustafson, and the defendant Elizabeth Ann Duncan, with her counsel S. Ward Sullivan and Frank P. Duncan are present in Court. The above entitled cause comes regularly on at this time for pronouncing judgment against the defendant.

The defendant having heretofore been found guilty by a jury of the offense of murder in the first degree, the jury having thereafter fixed the penalty at death and the Court having found the defendant to be sane at the time of the commission of the crime, she is duly arraigned for judgment, shows no legal cause why judgment should not be pronounced against her and it is therefore ordered, adjudged and decreed that the said defendant be punished by being put to death by the administration of a lethal gas.

It is further ordered, adjudged and directed that the said defendant be taken by the Sheriff of the County of Ventura to the California Institution for Woman at Corona, California.

The defendant is remanded to the custody of the Sheriff.

STATE OF CALIFORNIA,
County of Ventura, ss:

I, Robert L. Hamm, County Clerk of the County of Ventura, State of California, and ex-officio Clerk of the Superior Court therein, hereby certify that the foregoing is a full, true and correct copy of the Order duly made and entered in the minutes of said Superior Court in the above entitled cause and that I have compared the same with the original,

and that the same is a correct transcript therefrom and of the whole thereof.

Attest my hand and the seal of said Superior Court this 3rd day of April 1959.

Robert L. Hamm, County Clerk. By W. R. Leacock, Deputy Clerk.

[fol. 130] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF VENTURA

[Title omitted]

JUDGE'S APPROVAL OF CLERK'S TRANSCRIPT

STATE OF CALIFORNIA,
County of Ventura, ss:

I, Charles F. Blackstock, Judge of the Superior Court of the State of California, in and for the County of Ventura, hereby certify that the foregoing Clerk's Transcript, pages 1 to 131, inclusive, in the above proceedings, is true and correct, and that the same is now, therefore, approved by me, this 9th day of June, 1959.

Chas. F. Blackstock, Trial Judge.

[fol. 131] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. a] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF VENTURA

CR 3220

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

ELIZABETH ANN DUNCAN, LUIS ESTRADA MOYA, AUGUSTINE BALDONADO, Defendants

Supplemental Clerk's Transcript as to Defendant Elizabeth Ann Duncan

APPEARANCES:

Attorney for Plaintiff and Respondent: Roy A. Gustafson, District Attorney, Court House, Ventura, California.

Attorneys for Defendant and Appellant: S. Ward Sullivan, Frank Duncan, 215 West Fifth St., Los Angeles 13, Calif.

[fol. 1] AFFIDAVIT OF FLOYD K. GRESSETT IN SUPPORT OF APPLICATION FOR REMOVAL

STATE OF CALIFORNIA,
County of Ventura, ss:

Floyd K. Gressett, being first duly sworn, deposes and says that:

I am the duly appointed and acting Minister for the Avenue Community Church located in the City of Ventura, County of Ventura, California;

Since the incarceration of Luis Moya and the charge filed against him for the death of Olga Duncan, I have served as the spiritual adviser and minister to Luis Moya who first expressed the desire that he be allowed to consult with me.

It is known among my congregation and other acquaintances of mine, that I am acting as a minister to defendant Luis Moya. Consequently, people in my congregation and other residents of Ventura County have discussed the case with me and have expressed sentiments suggesting that they were prejudiced against the defendants in this case as a result of the notoriety given the case by newspapers and by certain public officials charged with the investigation and prosecution of the case. Others have expressed the sentiment that those accused would not receive a fair and impartial trial because of the wide notoriety given in the newspapers and statements by public officials charged with the prosecution and investigation.

Floyd K. Gressett.

Subscribed and sworn to before me this 10th day of January, 1959.

Burt M. Henson, Notary Public in and for said County and State.

[File endorsement omitted.]

[fol. 2] AFFIDAVIT OF WILLIAM A. GILBERT IN SUPPORT OF APPLICATION FOR REMOVAL.

STATE OF CALIFORNIA,
County of Ventura, ss:

I, William A. Gilbert, being first duly sworn, depose and say that:

I am the duly appointed and acting Rector of St. Paul's Episcopal Church, Ventura, California, and have been acting in that capacity for 8½ years. At one time in my life, I served as Chaplain to Washington State Prison at Walla Walla, Washington. I have made public my personal views about abolition of the death penalty on many occasions.

Since my personal views on the abolition of capital punishment and my experience as a prison chaplain are widely known in the Ventura County area, many people have talked to me concerning that subject. Since the inception of the case involving the death of Olga Duncan, many persons who are residents of Ventura County have expressed their opinions to me concerning the case. Some of the persons with whom I have talked concerning the case have expressed the opinion that they had prejudged the case and that there was no question in their minds but that those charged with the death of Olga Duncan should be sentenced to death. Many of these residents of Ventura County have stated to me that there is no need of any trial or court process in this case because of the overwhelming evidence as reported by newspapers and public officials connected with the investigation of the Duncan case. Many other residents of Ventura County with whom I have discussed the Duncan case, have stated to me that the vast notoriety given this case by public officials and by newspapers had prejudiced the right of the accused to a fair and impartial trial in Ventura County.

William A. Gilbert.

Subscribed and sworn to before me this 9th day of January, 1959.

Burt M. Henson, Notary Public in and for said County and State.

[File endorsement omitted.]

[fol. 3] DECLARATION OF DONALD L. BENTON IN SUPPORT OF APPLICATION FOR REMOVAL

I, Donald L. Benton, make the following declaration:

I am an attorney at law, admitted to practice in the State of California, and a resident of the City of San Buenaventura, County of Ventura, State of California.

Within the scope of my rather extensive non-legal acquaintance, the matter of People vs. Duncan, Baldonado and Moya is the most widely discussed criminal case in Ventura County since January 1, 1951. I have been drawn into a discussion of the case at all social functions I have attended since the case's inception. I have heard it discussed at service club meetings, directors' meetings, luncheon meetings, etc.

At no time have I observed any reluctance on the part of anyone discussing the case to state that the defendants are guilty. I have heard innumerable statements that the defendants should be executed. I have never heard any person state that he or she did not yet have an opinion regarding the guilt of the accused.

At various times I have pointed out that such opinions are founded on newspaper releases issued by law enforcement agencies, which were not necessarily accurate or complete. Persons so accused have admitted the truth of the charge, but have in substance stated that "They better not let me on the jury—I'd hang them."

I have further pointed out to persons expressing such opinions that this case, particularly with the news release regarding the death penalty which was issued before the Duncan indictment, is an example of the evils of trying a case in the newspapers. The logic of my argument was conceded, but at no time was I able to persuade anyone to change his or her opinion, or even to withhold judgment.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 9th, 1959, at Ventura, California.

Donald L. Benton.

[fol. 4] AFFIDAVIT OF DAVID E. FLYNN IN SUPPORT OF APPLICATION FOR REMOVAL

STATE OF CALIFORNIA,
County of Ventura, ss:

David E. Flynn, being first duly sworn, deposes and says:

I live at 275 E. Highland Drive, Camarillo, County of Ventura, California;

Prior to January 5, 1959, I was the duly elected Judge of the Justice Court of the Moorpark-Camarillo Judicial District, County of Ventura, California;

On or about January 4, 1959, a very dear friend of mine and a resident of the County of Ventura came to my home at 275 E. Highland Drive, Camarillo, and discussed with me the pending charges against Elizabeth Duncan, Luis Moya and Augustine Baldonado. He stated to me in substance that everyone connected with that case should be summarily exterminated. He expressed dissatisfaction with the fact that the accused should be given the benefit of court process. He stated that he could not understand why an attorney would represent one of the accused. He further stated that he was intending to consult one of defense counsel as a private attorney, but would not do so since that particular attorney was acting as defense counsel in this case.

I stated to this man that with my background as a Judge of the Justice Court, I felt that everyone was entitled to the processes of the court and to a fair and impartial trial no matter who they were or what they were charged with. I further stated that all persons were entitled to counsel and that when counsel is appointed by the court, he is obligated to serve as defense counsel unless he has some good valid reason for not doing so. I pointed out to him that the defense counsel now appointed apparently had no valid reason for declining acceptance of the appointment and that therefore he was obligated to serve. I stated that anything less than this American tradition of a fair and impartial trial would be the "lynch law".

[fol. 5] This man then stated to me that the "lynch law" should be applied in this case and that defense counsel

should withdraw from the case. He stated that it would "hurt" one particular defense counsel in his law practice if he continued to serve as defense counsel. This man further stated that he had talked to twelve other persons in the Oxnard-Camarillo area and that each of the twelve other persons felt exactly the same way he did about the case.

David E. Flynn.

Subscribed and sworn to before me this 9th day of January, 1959.

Burt M. Henson, Notary Public in and for said County and State.

[fol. 6] AFFIDAVIT OF ALBERT T. BLANFORD IN SUPPORT OF APPLICATION FOR REMOVAL.

STATE OF CALIFORNIA,
County of Ventura, ss:

Albert T. Blanford, being first duly sworn, deposes and says that:

I am a resident of the City of Ventura, County of Ventura, State of California;

I am an Attorney at Law licensed by the State of California and maintain an office for the purpose of practicing law at 2408 East Main Street, Ventura, California. The fact that I am an attorney is known among my friends and acquaintances.

Since the commencement of the investigation involving the death of Olga Duncan, many of my friends and acquaintances who are residents of Ventura County have discussed this case with me. Practically all who discussed the Duncan case with me have expressed one or the other of the following opinions:

1. That those accused of causing the death of Olga Duncan were guilty and should be sentenced to death.
2. That the widespread notoriety given this case by newspapers, plus the statements of public officials charged

with the investigation of this case, have prejudiced the right of the accused to a fair and impartial trial.

Albert T. Blanford.

Subscribed and sworn to before me this 9th day of January, 1959.

Burt M. Henson, Notary Public in and for said County and State.

[fol. 7] AFFIDAVIT OF DAVID R. DRAPEAU IN SUPPORT OF APPLICATION FOR REMOVAL.

STATE OF CALIFORNIA,
County of Ventura, ss:

David R. Drapeau, being first duly sworn, deposes and states that:

I am resident of the City of Ventura, County of Ventura, State of California. I am an Attorney at Law licensed to practice by the State of California, and maintain an office for the purpose of practicing law at 736 East Main Street, Ventura, California. The fact that I am an attorney is known among my friends and acquaintances.

Since the commencement of the investigation involving the death of Olga Duncan, many of my friends and acquaintances who are residents of Ventura County have discussed this case with me. Practically all who discussed the Duncan case with me have expressed one or the other of the following opinions:

1. That those accused of causing the death of Olga Duncan were guilty and should be sentenced to death.
2. That the widespread notoriety given this case by newspapers, plus the statements of public officials charged with the investigation of this case, have prejudiced the right of the accused to a fair and impartial trial.

David R. Drapeau.

Subscribed and sworn to before me this 9th day of January, 1959.

Burt M. Henson, Notary Public in and for said County and State.

[fol. 8] AFFIDAVIT OF BURT M. HENSON IN SUPPORT OF APPLICATION FOR REMOVAL

Burt M. Henson, being first duly sworn, deposes and states as follows:

I am an Attorney at Law licensed to practice law in the State of California and maintain an office for the purpose of practicing law at 65 South Palm Drive, Camarillo, California. Prior to January 1, 1958, I served in the office of the District Attorney of Ventura County as a Deputy District Attorney. My duties as Deputy District Attorney primarily involved the investigation and prosecution of criminal cases as distinguished from civil cases. This experience was known by my personal friends and acquaintances.

The case involving the alleged disappearance and death of Olga Duncan and the case involving an alleged fraudulent annulment obtained by Elizabeth Duncan first came to my attention through newspaper articles, television and radio broadcasts. Almost immediately from the time these cases [fol. 9] became public, they have become "conversation pieces". Practically all of my personal friends, family and acquaintances discussed this case with me. Practically all the residents of the County of Ventura who discussed this case with me expressed some opinion based upon newspaper and television and radio reports and based upon statements made by public officials charged with the investigation and prosecution of the case. The vast majority of opinions expressed were in substance that those accused were guilty and should be summarily executed, that this was the worst case imaginable, that the accused were nothing more than animals and should be disposed of accordingly.

In conversation with my friends and acquaintances, the accused were referred to as "Dirty Bastards", "Lousy Sons of Bitches" and other vile epithets. Other opinions expressed were in substance that any prospective jurors would be prejudiced as a result of the wide notoriety given this case and as a result of the statements of public officials involved in the investigation and prosecution of the case. Only one man who is eligible for jury duty with whom I talked expressed the opinion that he would endeavor to

keep an open mind on the case but stated "I hope I am not called upon for jury duty in this case".

On or about December 30, 1958, in the late afternoon, I was notified by the Clerk of the Superior Court that I had been appointed by Judge Blackstock to represent Luis Moya in the action. After coming home from work, I informed my family of the appointment. My eleven year old step-daughters stated: "What are you going to do that for? That's no case". After the fact of my appointment to represent Luis Moya became public, many of my friends and acquaintances joked with me about it and one friend jokingly stated: "How lucky can you get!"

[fol. 10] On or about January 6, 1959, I appeared in the Courtroom of the above entitled court. The purpose of the appearance was for the arraignment of the above named defendants. The time set for the arraignment was 2 P.M. I arrived at the courthouse at approximately 1:15 P.M. for the purpose of conferring with defendant Luis Moya before the arraignment. At 1:15 P.M., all of the spectator seats in the courtroom were filled and other spectators were standing to the rear of the courtroom. I conferred with defendant Luis Moya in the Ventura County Jail which is located on the second floor on the west end of the courthouse. After conferring with Luis Moya for approximately 20 minutes, I proceeded toward the courtroom which is located in the middle of the courthouse on the second floor. The hallway which lead from the jail to the courtroom wherein the arraignment proceedings were scheduled is approximately 15 to 20 feet wide near the entrance to the courtroom. The hallway at the entrance to the courtroom was blocked by spectators and another attorney and myself were forced to shoulder our way through the spectator crowd.

I had to gain entrance to the courtroom through a side door which leads into the Judge's Chambers. The courtroom was filled to capacity including all standing room in the spectator section. Attached hereto as Exhibit 1 is the January 7, 1959 issue of the Oxnard Press Courier which contains a photograph of the condition of the courtroom at the time of the arraignment. The number of persons comprising the crowd was estimated to be 1000 as reported in the January 7, 1959 issue of the Los Angeles Times, a

copy of which is attached hereto as Exhibit 2. Exhibit 2 termed the crowd as "hostile" and reported that "a middle aged woman aimed a smashing blow at her (defendant Elizabeth Duncan) with her purse."

[fol. 11] At the time of the arraignment, Counsel for defendant Elizabeth Duncan entered a plea of not guilty by reason of insanity. At this point, the spectator crowd uttered a distinctly audible "Ohhhh". The court set the trial for defendant Elizabeth Duncan on February 16, 1959 at 10 A.M. based upon the representation of the District Attorney that a trial must be had within a thirty day period following return of the indictment. Defendant Elizabeth Duncan waived time for trial within the represented 30 day period.

The Court then inquired of affiant as counsel for defendant Luis Moya whether or not February 16, 1959 was agreeable for a joint trial of all defendants. Affiant objected to the early trial date in view of the prejudice against the defendants displayed by the courtroom spectators. When affiant suggested that the trial be set for the middle of March, the spectator crowd in the courtroom again uttered a distinctly audible "Ohhhh".

Affiant believes and thereon alleges that there is widespread and deep-seated prejudice against the defendants in the above entitled case. Affiant believes and thereon alleges that a primary reason for the existing prejudice is the fact that certain public officials made certain public statements concerning the above entitled case. Some high ranking public officials publicly expressed their opinions concerning the case. Other public officers released information to the press and other public media concernirg the investigation. Many of such statements were made before any legal tribunal had heard any evidence. Many of such statements divulged information which would not have in any way constituted legal evidence in a trial. The statements of opinion pubished would probably have been classified as "prejudicial misconduct" if stated in a court of law. Affiant does not doubt the personal sincerety of these public officers. Affiant believes these public officers to be men of personal integrity and honesty. Affiant, however, does believe and thereon alleges that these public officers [fol. 12] became "carried away" and clearly overstepped

the bounds of legal propriety and discretion in making such public statements and in so doing, contributed materially to the prejudice against the defendants which now exists.

Roy A. Gustafson is the duly elected and acting District Attorney for the County of Ventura. He has served in that capacity for approximately 8 years and is well informed as to his duties and responsibilities with respect to the public office he holds.

In the December 22, 1958 issue of the Ventura County Star-Free Press, a copy of which is attached hereto as Exhibit 3, Roy A. Gustafson caused to be published a statement which contained among other matters, the following:

"The brutal, calculated, revolting killing for hire of Olga Duncan is one of a number of horrible crimes which have recently been committed in California. I simply cannot understand how some of our leaders, in the face of these events, can seriously contend that the death penalty is not appropriate punishment for the perpetrators of such a crime . . . Retaliation is a basic instinct of the human race . . . From biblical times, a life for a life has been recognized as just and fair."

The statement is printed in full on Page 1 of Exhibit 3. The same statement in full appeared in the December 24, 1958 issue of the Oxnard Press Courier on page 15, a copy of said issue is attached hereto as Exhibit 4.

These statements were published before the case was even presented to the Grand Jury of Ventura County for consideration. The District Attorney is legal counsel for the Grand Jury and Roy A. Gustafson presented the facts of the above entitled case to the Grand Jury for consideration on December 26, 1958. As reported in the December 27, 1958 issue of the Ventura County Star-Free Press, the Grand Jury returned indictments against the above named defendants after deliberating only 15 minutes. [fol. 13] A copy of the December 27, 1958 issue of the Ventura County Star-Free Press is attached hereto and made a part hereof as Exhibit 5. As reported in the December 27, 1958 issue of the Oxnard—Press Courier, a copy

of which is attached hereto as Exhibit 6, the Grand Jury deliberated only 12 minutes before returning an indictment for murder against all three of the above named defendants. The December 27, 1958 issue of the Los Angeles Times, a copy of which is attached hereto as Exhibit 7 estimated the time for Grand Jury deliberation at 15 minutes. Affiant believes that 12 to 15 minutes deliberation by a Grand Jury considering 9 hours of testimony and 3 defendants is a very short time. Affiant believes that this fact illustrates the effect of the statements of the District Attorney.

Affiant is informed and believes and thereon alleges that in an earlier Edition of the December 27, 1958 issue of the Ventura County Star-Free Press, there was published a statement by Roy A. Gustafson, referring to the above entitled case as follows:

"This crime," he (Gustafson) declared, "is one of the most vicious and horrible in the annals of modern justice. Each new fact uncovered throughout the investigation has been more disgusting and shocking than the last.

"It should serve as an object lesson to all persons who find it necessary to extend a gratuitous and wasted sympathy toward murderers—asking that they be spared their lives.

"Nothing short of death could possibly be considered a just or a fitting penalty for the perpetrators of this crime against an innocent young mother-to-be."

In the December 30, 1958 issue of the Ventura County Star Free Press, a copy of which is attached hereto as Exhibit 8, on page 6, the following headlines were published:

"Roy Gustafson Explains Why He'll ask Death Penalty for Duncan Murder Trio"

[fol. 14] In the article following the headline, Roy A. Gustafson, apparently being interviewed by reporter Marvin Sosna, stated that "the chances of rehabilitating the three persons arraigned today on a charge of murder for hire are awfully slim . . . and I don't want to take that kind of chance." The article goes on as follows: "But he (Gustafson) believes that the Duncan case and torture—sex slayings attributed to confessed killer Harvey

Glatman in San Diego County will deter a number of legislators from voting for abolition (of the death penalty) during the coming legislative session." In discussing rehabilitation further, the article states: "But as far as rehabilitation goes, Moya was paroled a year ago after serving a year out of a 1-to-10 year term for marijuana possession. Gustafson says Moya was using marijuana when he was arrested in the Duncan murder case." The article further states: "He (Gustafson) commented that the possibility of putting California's third woman in the gas chamber does not present him (Gustafson) with any qualms. 'This is appropriate punishment', he said, paraphrasing the judge in the Harvey Glatman case, and he adds: 'What are you going to do, rehabilitate 'em.' "

In the December 29, 1959 issue of the Ventura County Star Free Press, copy of which is attached hereto as Exhibit 9, the following headline appears on Page 1: "Heart Attack Sends Mrs. Duncan to Hospital". In the article following the headline, the following appears: "District Attorney Roy A. Gustafson this morning said that Mrs. Duncan's illness may have been real but added that: 'This is a trick used by many persons in jail on a serious charge. It is known that suspects fake illnesses to get into a hospital where there is a chance for escape.' "

Other public officers saw fit to express their opinions on the case. In the December 22, 1958 issue of the Los Angeles Herald Express, a copy of which is attached hereto as Exhibit 10, referring to the above entitled case, the follow-
[fol. 15] ing was reported on Page 1: "The execution of the $6000 slaying was called by Santa Barbara Police Lieut. Charles Thompson, 'the most cold-blooded crime I've ever heard of. We knew from the first there was something strange about this case.' "

In the December 15, 1958 issue of the Ventura County Star Free Press, a copy of which is attached hereto as Exhibit 11, referring to the disappearance of Olga Duncan and arrest of Elizabeth Duncan, on Page 1, the following appeared: "But there were indications of more serious charges. Said Woodruff J. Deam, chief criminal deputy of the district attorney's office: 'When we have a suspected murder case, we don't give hints.' "

Apparently the attitude expressed by Mr. Deem was not shared by his fellow law enforcement officials connected with the investigation. Not only were "hints" given out thereafter, but moreso, a play by play description of every detailed phase of the investigation. The matters reported by the newspapers were of a nature which must necessarily have come from law enforcement officers. Throughout the reports published were various law enforcement officers statements concerning every new development in the case. The information revealed was so complete and detailed that affiant believes for all practical purposes, the case has been tried. The names of the officers giving out information and the information published are set forth in full in the following copies of the following issues of the Ventura County Star-Free Press, which are attached hereto and numbered accordingly:

December 16, 1958—Exhibit 11-A
December 17, 1958—Exhibit 12
December 18, 1958—Exhibit 13
December 19, 1958—Exhibit 14
December 20, 1958—Exhibit 15
December 23, 1958—Exhibit 16
December 24, 1958—Exhibit 17
[fol. 16] December 26, 1958—Exhibit 18
December 31, 1958—Exhibit 19

The Ventura County Star Free Press has the largest circulation (22,000) of any other newspaper published in Ventura County. It and the Oxnard Press Courier are the only two daily newspapers published in the County of Ventura. The Oxnard Press Courier is a newspaper of general circulation and advertises itself as the official newspaper of the City of Oxnard. The City of Oxnard is the largest city in the County of Ventura with a population of approximately 35,000. Practically the same facts concerning the investigation of the above entitled case were published in the Oxnard Press Courier. The following issues of the Oxnard Press Courier are attached hereto as the following numbered exhibits:

December 16, 1958—Exhibit 20
December 17, 1958—Exhibit 21

December 19, 1958—Exhibit 22
December 20, 1958—Exhibit 23
December 22, 1958—Exhibit 24
December 23, 1958—Exhibit 25
December 26, 1958—Exhibit 26
December 29, 1958—Exhibit 27
December 31, 1958—Exhibit 28

In subsequent issues of both the Ventura County Star Free Press and the Oxnard Press Courier, there were published practically the whole of the recorded transcript of the testimony taken before the Grand Jury which returned the indictment in the above entitled case. The recorded transcript appeared as daily installments with verbatum passages of Grand Jury testimony published. A typical example are the passages published in the December 31, 1958 issue of the Oxnard Press Courier attached hereto as Exhibit 28.

Affiant is informed and believes and thereon alleges that the Los Angeles Times is the newspaper of largest circula-
[fol. 17] tion in Southern California. It is published in the County of Los Angeles but is widely circulated and read in the County of Ventura. Attached hereto as Exhibits are the copies of the following issues:

December 16, 1958—Exhibit 29
December 22, 1958—Exhibit 30
December 23, 1958—Exhibit 31
December 31, 1958—Exhibit 32

The Los Angeles News Herald is a newspaper of general circulation and is published in the County of Los Angeles but which is widely circulated and read in the County of Ventura. Attached hereto as Exhibits are the following copies of issues:

December 15, 1958—Exhibit 33
December 26, 1958—Exhibit 34
December 30, 1958—Exhibit 35

The above exhibits are to illustrate the widespread notoriety given the above entitled case, the type of information released to newspapers by law enforcement officers, the release of the Grand Jury transcript for publication,

the information published which would not even constitute evidence in the case, and the prejudice which must necessarily have resulted from such publications.

The above entitled case has also been discussed and commented upon by practically every radio and television newscaster in the Los Angeles-Ventura County area. The broadcasts which affiant has heard was in substance the same as that reported in the newspapers attached hereto as exhibits.

Defendant Luis Moya is of Spanish-Mexican descent. During affiant's residence in the County of Ventura for the past four years, he has heard various comments from time to time from residents of Ventura County indicating prejudice toward certain persons of Spanish-Mexican descent.

Burt M. Henson.

[fol. 18] Subscribed and sworn to before me this 10th day of January, 1959.

B. P. Ruthur, Notary Public in and for the County of Ventura, State of California.

[fol. 19] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF VENTURA

REQUEST FOR INSTRUCTIONS—Filed March 16, 1959

Plaintiff respectfully requests that the attached instructions be given to the jury in the order in which they are numbered.

Respectfully submitted, Roy A. Gustafson, District Attorney, County of Ventura, State of California.

[fol. 20] PLAINTIFF'S REQUESTED INSTRUCTION No. 1

Ladies and Gentlemen of the Jury:

It becomes my duty as judge to instruct you concerning the law applicable to this case, and it is your duty as jurors to follow the law as I shall state it to you.

The function of the jury is to try the issues of fact that are presented by the allegations in the indictment filed in this court and the defendant's plea of "not guilty". This duty you should perform uninfluenced by pity for the defendant or by passion or prejudice against her. You must not suffer yourselves to be biased against the defendant because of the fact that she has been arrested for this offense, or because an indictment has been filed against her, or because she has been brought before the court to stand trial. None of these facts is evidence of her guilt, and you are not permitted to infer or to speculate from any or all of them that she is more likely to be guilty than innocent.

You are to be governed solely by the evidence introduced in this trial and the law as stated to you by me. The law forbids you to be governed by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling. Both the People and the defendant have a right to demand, and they do demand and expect, that you will conscientiously and dispassionately consider and weigh the evidence and apply the law of the case, and that you will reach a just verdict, regardless of what the consequences of such verdict may be. That verdict must express the individual opinion of each juror.

Given.

CALJIC 1.

Chas. F. Blackstock, Judge.

[fol. 21] PLAINTIFF'S REQUESTED INSTRUCTION NO. 32-A

For the purpose of this phase of this trial, the defendant Elizabeth Duncan is conclusively presumed to have been legally sane at the time the offense is alleged to have been committed.

Given.

Penal Code, § 1026.

Chas. F. Blackstock, Judge.

[fol. 22] DEFENDANT DUNCAN'S PROPOSED INSTRUCTION No. 25

I instruct you that if you entertain a reasonable doubt, as to whether a particular witness was or was not an accomplice, you are to give the benefit of such doubt to the defendant and for the purpose of this case you must consider such person and witness as an accomplice.

Requested by Defendant.

Given as Requested.

Chas. F. Blackstock, Judge.

[fol. 23] PLAINTIFF'S REQUESTED INSTRUCTION No. 2

You are the exclusive judges of the facts and of the effect and value of the evidence, but you must determine the facts from the evidence produced here in court. If any evidence was admitted and afterwards was ordered by me to be stricken out, you must disregard entirely the matter thus stricken, and if any counsel intimated by any of his questions that certain hinted facts were, or were not, true, you must disregard any such intimation, and must not draw any inference from it. As to any statement made by counsel in your presence concerning the facts in the case, you must not regard such a statement as evidence; provided, however, that if counsel for both parties have stipulated to any fact, you are to regard that fact as being conclusively proved; and if, in the trial, either party has admitted a fact to be true, such admision may be considered by you as evidence in the case.

Given.

CALJIC 2.

Chas. F. Blackstock, Judge.

[fol. 24] PLAINTIFF'S REQUESTED INSTRUCTION No. 3

The People and the defendant both are entitled to the individual opinion of each juror. It is the duty of each of you, after considering all the evidence in the case, to determine, if possible, the question of the guilt or innocence of

the defendant. When you have reached a conclusion in that respect, you should not change it merely because one or more or all of your fellow jurors may have come to a different conclusion, or merely to bring about a unanimous verdict. However, each juror should freely and fairly discuss with his fellow jurors the evidence and the deductions to be drawn therefrom. If, after doing so, any juror should be satisfied that a conclusion first reached by him was wrong, he unhesitatingly should abandon that original opinion and render his verdict according to his final decision.

Given.
CALJIC 3.

Chas. F. Blackstock, Judge.

[fol. 25] PLAINTIFF'S REQUESTED INSTRUCTION No. 4

At times throughout the trial the court has been called upon to pass on the question whether or not certain offered evidence might properly be admitted. You are not to be concerned with the reasons for such rulings and are not to draw any inferences from them. Whether offered evidence is admissible is purely a question of law. In admitting evidence to which an objection is made, the court does not determine what weight should be given such evidence; nor does it pass on the credibility of the witness. As to any offer of evidence that has been rejected by the court, you, of course, must not consider the same; as to any question to which an objection was sustained, you must not conjecture as to what the answer might have been or as to the reason for the objection.

Given.

CALJIC 6.

Chas. F. Blackstock, Judge.

[fol. 26] PLAINTIFF'S REQUESTED INSTRUCTION No. 5

If in these instructions any rule, direction or idea be stated in varying ways, no emphasis thereon is intended

by me, and none must be inferred by you. For that reason, you are not to single out any certain sentence, or any individual point or instruction, and ignore the others, but you are to consider all the instructions as a whole, and are to regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

Given.

CALJIC 5.

Chas. F. Blackstock, Judge.

[fol. 27] PLAINTIFF'S REQUESTED INSTRUCTION No. 6

Statements of law often cannot be made abstractly, but must be related to possible situations of fact. Throughout my instructions you will bear in mind that whenever the possibility of a certain state of facts is assumed for the purpose of stating the applicable law, I do not mean to imply an opinion that the evidence has proved the existence of those facts, nor to suggest an opinion favorable or unfavorable to either the People or the defendant.

Given.

CALJIC 38.

Chas. F. Blackstock, Judge.

[fol. 28] PLAINTIFF'S REQUESTED INSTRUCTION No. 7

A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his or her guilt is satisfactorily shown, he or she is entitled to an acquittal, but the effect of this presumption is only to place upon the State the burden of proving him or her guilty beyond a reasonable doubt. Reasonable doubt is defined as follows: It is not a mere possible doubt; because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of

all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.

Given.

CALJIC 21.

Chas. F. Blackstock, Judge.

[fol. 29] PLAINTIFF'S REQUESTED INSTRUCTION No. 8

The law does not require demonstration or that degree of proof which, excluding all possibility of error, produces absolute certainty, for such degree of proof is rarely possible. Only that degree of proof is necessary which convinces the mind and directs and satisfies the conscience of those who are bound to act conscientiously upon it.

Given.

CALJIC 22.

Chas. F. Blackstock, Judge.

[fol. 30] PLAINTIFF'S REQUESTED INSTRUCTION No. 9

Neither the prosecution nor the defense is required to call as witnesses all persons who are shown to have been present at any of the events involved in the evidence, or who may appear to have some knowledge of the matters in question in this trial; nor is the prosecution or defense required to produce as exhibits all objects or documents that have been referred to in the testimony, or the existence of which may have been suggested by the evidence.

Given.

CALJIC 23.

Chas. F. Blackstock, Judge.

[fol. 31] PLAINTIFF'S REQUESTED INSTRUCTION No. 10

Two classes of evidence are recognized and admitted in courts of justice, upon either or both of which, juries lawfully may base their findings, whether favorable to the people or to the defendant, provided, however, that to support a verdict of guilt the evidence, whether of one kind or the other or a combination of both, must carry the convincing quality required by law.

One type of evidence is known as direct and the other as circumstantial. The law makes no distinction between the two classes as to the degree of proof required for conviction or as to their effectiveness in defendant's favor, but respects each for such convincing force as it may carry and accepts each as a reasonable method of proof.

Direct evidence of a person's conduct at any time in question consists of the testimony of every witness who, with any of his own physical senses, perceived such conduct or any part thereof, and which testimony describes or relates what thus was perceived. All other evidence admitted in the trial is circumstantial in relation to such conduct, and, insofar as it shows any act, statement or other conduct, or any circumstance or fact, tending to prove by reasonable inference the innocence or guilt of the defendant, it may be considered by you in arriving at a verdict.

Given.

CALJIC 24.

Chas. F. Blackstock, Judge.

[fol. 32] PLAINTIFF'S REQUESTED INSTRUCTION No. 11

Proof of a motive for an alleged crime is permissible and often is valuable, but never is essential. If, after a consideration and comparison of all the evidence, you feel an abiding conviction to a moral certainty that the defendant committed the crime of which she is accused, the motive for its commission becomes unimportant. Evidence of motive is sometimes of assistance in removing doubt and completing proof which otherwise might be unsatisfactory. Motive may be shown by positive evidence or by facts sur-

rounding the act if they support a reasonable inference. When thus proved, motive becomes a circumstance, but nothing more than a circumstance, to be considered by you. The absence of motive is equally a circumstance to be reckoned with, but on the side of innocence, tending to support the presumption of innocence, and to be given such weight as you deem proper.

Given.

CALJIC 35.

Chas. F. Blackstock, Judge.

[fol. 33] PLAINTIFF'S REQUESTED INSTRUCTION No. 12

The jury are the sole and exclusive judges of the effect and value of evidence addressed to them and of the credibility of the witnesses who have testified in the case. The term "witness" includes every person whose testimony under oath has been received as evidence, whether by examination here in court or through deposition.

The character of the witnesses, as shown by the evidence, should be taken into consideration for the purpose of determining their credibility, that is whether or not they have spoken the truth. The jury may scrutinize the manner of witnesses while on the stand, and may consider their relation to the case, if any, and also their degree of intelligence. A witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which he testifies; his interest in the case, if any, or his bias or prejudice, if any, for or against one or any of the parties; by the character of his testimony or by contradictory evidence. A witness may be impeached also by evidence that at other times he has made statements inconsistent with his present testimony as to any matter material to the cause on trial; and a witness may be impeached also by proof that he has been convicted of a felony.

A witness wilfully false in one material part of his or her testimony is to be distrusted in others. The jury may reject the whole of the testimony of a witness who has wilfully sworn falsely as to a material point. If you are convinced that a witness has stated what was untrue as to

a material point, not as a result of mistake or inadvertence, but wilfully and with the design to deceive, then you may treat all of his or her testimony with distrust and suspicion, [fol. 34] and reject all unless you shall be convinced that he or she has in other particulars sworn to the truth.

Given.

CALJIC 52.

Chas. F. Blackstock, Judge.

[fol. 35] PLAINTIFF'S REQUESTED INSTRUCTION No. 13

You are not bound to decide in conformity with the testimony of a number of witnesses which does not produce conviction in your mind, as against the declarations of a lesser number or a presumption or other evidence which appeals to your mind with more convincing force. This rule of law does not mean that you are at liberty to disregard the testimony of the greater number of witnesses merely from caprice or prejudice, or from a desire to favor one side as against the other. It does mean that you are not to decide an issue by the simple process of counting the number of witnesses who have testified on the opposing sides. It means that the final test is not in the relative number of witnesses, but in the relative convincing force of the evidence.

Given.

CALJIC 53.

Chas. F. Blackstock, Judge.

[fol. 36] PLAINTIFF'S REQUESTED INSTRUCTION No. 14

In respect to any attempt to impeach a witness by showing that on some former occasion he made a statement or statements that are contradictory of his testimony here, you are instructed that the evidence of any such contradictory statement is not received for the purpose of proving the truth of what then was said, but only for the purpose of testing the credibility of the witness; you are permitted

to consider such evidence only for that purpose, and you are the exclusive judges of the effect of such evidence on the witness's credibility.

However, when the witness whose impeachment is attempted is the defendant, then the prior contradictory statements may be considered by you not only for the purpose of testing the defendant's credibility as a witness, but also along with all other evidence in determining the defendant's guilt or innocence.

Given.

CALJIC 54-A.
CALJIC 54-A. Alternate

Chas. F. Blackstock, Judge.

[fol. 37] PLAINTIFF'S REQUESTED INSTRUCTION No. 15

The fact that a witness had been convicted of a felony, if such be a fact, may be considered by you for only one purpose, namely, in judging the credibility of that witness. The fact of such a conviction does not necessarily destroy or impair the witness's credibility, and it does not raise a presumption that the witness has testified falsely. It is simply one of the circumstances that you are to take into consideration in weighing the testimony of such a witness.

Given.

CALJIC 54-B.

Chas. F. Blackstock, Judge.

[fol. 38] PLAINTIFF'S REQUESTED INSTRUCTION No. 16

The impeachment of a witness does not necessarily mean that his or her testimony is completely deprived of value, or that its value is destroyed in any degree. The effect, if any, of the impeachment upon the credibility of the witness is for you to determine.

Given.

CALJIC 54.

Chas. F. Blackstock, Judge.

[fol. 39] PLAINTIFF'S REQUESTED INSTRUCTION No. 17

Duly qualified experts may give their opinions on questions in controversy at a trial. To assist you in deciding such questions, you may consider the opinion with the reason stated therefor, if any, by the expert who gives the opinion. You are not bound to accept the opinion of an expert as conclusive, but you should give to it the weight to which you shall find it to be entitled. You may disregard any such opinion, if you find it to be unreasonable.

Given.

CALJIC 56.

Chas. F. Blackstock, Judge.

[fol. 40] PLAINTIFF'S REQUESTED INSTRUCTION No. 18

A certified copy of a marriage record introduced in evidence in this case constitutes proof of the facts stated in such copy until contradicted and overcome by other evidence.

Given.

Health & Safety Code, section 10577.
Code of Civil Procedure, section 1833.

Chas. F. Blackstock, Judge.

[fol. 41] PLAINTIFF'S REQUESTED INSTRUCTION No. 19

Evidence has been received in this case tending to show that on occasions other than this trial the defendant herself made statements tending to prove, when considered with the rest of the evidence, her guilt of the crime for which she is on trial. Such a statement is called an admission. An admission consists of any statement or other conduct by a defendant whereby the defendant expressly or impliedly acknowledges a fact that contributes in some degree to the proof of defendant's guilt and which statement was made or conduct occurred outside of the trial.

The guilt of a defendant may not be established alone by

any admission made by the defendant outside of this trial. Before any person may be convicted of a criminal offense, there must be proof, independent of any such statement, that the crime in question was committed.

The law of this state admonishes you to view with caution the testimony of any witness which purports to relate an oral admission of the defendant.

Given.

CALJIC 29.
CALJIC 29-C. Alternate
CALJIC 29-D.

Chas. F. Blackstock, Judge.

[fol. 42], PLAINTIFF'S REQUESTED INSTRUCTION NO. 20

When, as in this case, it is alleged that the crime charged was committed "on or about" a certain date, if the jury finds that the crime was committed it is not necessary that the proof show that it was committed on that precise date; it is sufficient if the proof shows that the crime was committed on or about that date.

Given.

CALJIC 34. Alternate

Chas. F. Blackstock, Judge.

[fol. 43] PLAINTIFF'S REQUESTED INSTRUCTION NO. 21

If Elizabeth Duncan, intending that Olga Duncan be killed, advised or encouraged Luis Moya and Augustine Baldonado to kill Olga Duncan and if Moya and Baldonado, pursuant to that advice or encouragement, did kill Olga Duncan, then Elizabeth Duncan, although not present at the time of the killing, is equally guilty with Moya and Baldonado of any crime resulting from that killing.

Murder is the unlawful killing of a human being with malice aforethought.

Malice aforethought is a state of mind which is shown by a person's act. It may be expressed or implied. Where a person manifests a deliberate intention unlawfully to take away the life of a fellow creature, there is expressed malice. Where a person kills another when no considerable provocation occurs or when the circumstances attending the killing show an abandoned and malignant heart, there is implied malice. Malice does not, however, imply a pre-existing hatred or enmity toward the individual killed. When the evidence shows that a person has unlawfully killed another person, the law presumes that the killing was done with malice.

A murder which is perpetrated by any kind of wilful, deliberate and premeditated killing is murder of the first degree. For this crime the killing must be accompanied by a clear, deliberate intent to take life. The intent to kill must be the result of deliberation and must have been formed upon a pre-existing reflection and not under a heat of passion or other condition such as precludes the idea of deliberation. To constitute a deliberate and premeditated killing, the slayer must weigh and consider the question of killing and the reasons for and against such a choice and, having in mind the consequences, decide to and commit [fol. 44] the unlawful act causing death. If Moya and Baldonado murdered Olga Duncan, then, under the evidence in this case, the murder was of the first degree. If Elizabeth Duncan advised or encouraged the commission of that murder, then, under the evidence in this case, she is guilty of murder in the first degree.

Given.

People v. *King* (1938), 30 Cal. App. 2d 185, at p. 203.
People v. *Lee Yick* (1922), 189 Cal. 599, at p. 604.

Chas. F. Blackstock, Judge.

[fol. 45] Plaintiff's Requested Instruction No. 22

A conviction may not be had upon the testimony of an accomplice unless it be corroborated by such other evidence

as shall tend to connect the defendant with the commission of the offense.

An accomplice is one who is liable to prosecution for the identical offense charged against the defendant on trial. Except as to the person I shall name, whether or not any witness in this case was an accomplice as defined in these instructions is for the jury to determine from all the testimony and the circumstances as shown by the evidence.

To render a person an accomplice, he or she must in some manner knowingly and with criminal intent aid and abet or have advised or encouraged the commission of the criminal act charged.

Given.

CALJIC 821.

Chas. F. Blackstock, Judge.

[fol. 46] PLAINTIFF'S REQUESTED INSTRUCTION NO. 23

For one person to aid and abet another in the commission of a criminal offense means to knowingly and with criminal intent aid, promote, encourage or instigate by act or counsel, or by both act and counsel, the commission of such offense.

Given.

CALJIC 91-E, 821-A.

Chas. F. Blackstock, Judge.

[fol. 47] PLAINTIFF'S REQUESTED INSTRUCTION NO. 24

The corroboration of the testimony of an accomplice required by the law is not sufficient if it merely shows the commission of the offense or some or all of the circumstances thereof, or if it does no more than raise a suspicion of the guilt of the defendant. On the other hand, it is not necessary that the corroboration extend to every fact and detail covered by the testimony of the accomplice nor need it show the commission of the crime.

The corroboration of the test mony of an accomplice is sufficient if, of itself alone, it tends to connect the defendant with the commission of the offense in such a way as may reasonably satisfy you that the witness who must be corroborated is telling the truth, although it may be slight and although if, standing by itself, it would be entitled to but little consideration.

Given.

CALJIC 822.

Chas. F. Blackstock, Judge.

[fol. 48] PLAINTIFF'S REQUESTED INSTRUCTION No. 25

The corroboration of the testimony of an accomplice required by law may not be supplied by the testimony of one or more other accomplices, but must come from other evidence of circumstances or from the testimony of one or more witnesses who were not accomplices.

Given.

CALJIC 823.

Chas. F. Blackstock, Judge.

[fol. 49] PLAINTIFF'S REQUESTED INSTRUCTION No. 26

Merely assenting to or aiding or assisting in the commission of a crime without guilty knowledge or intent is not criminal, and a person so assenting to, or aiding, or assisting in, the commission of a crime without guilty knowledge or intent in respect thereto, is not an accomplice in the commission of such crime.

Given.

CALJIC 824.

Chas. F. Blackstock, Judge.

[fol. 50] PLAINTIFF'S REQUESTED INSTRUCTION NO. 27

It is the law that the testimony of an accomplice ought to be viewed with distrust. This does not mean that you may arbitrarily disregard such testimony, but you should give to it the weight to which you find it to be entitled after examining it with care and caution and in the light of all the evidence in the case.

In giving this instruction I do not intend to imply any opinion of my own as to the credibility of any witness.

Given.

CALJIC 829.

Chas. F. Blackstock, Judge.

[fol. 51] PLAINTIFF'S REQUESTED INSTRUCTION NO. 28

In determining whether or not the testimony of an accomplice has been corroborated as required by law, you must, for the purpose only of your consideration of that question, assume to be removed from the case that portion of the testimony of the accomplice, if any, which directly or indirectly tends to connect the defendant with the commission of the offense charged. You must examine all other evidence with a view to determining if there is any inculpatory evidence, that is, evidence tending to connect the defendant with the commission of the offense in such a way as may reasonably satisfy you that the witness who must be corroborated is telling the truth. If such other evidence does do that, then the testimony of the accomplice is corroborated; if it does not, then there is no corroboration, although the accomplice may be corroborated in regard to any number of other facts sworn to by him.

Given.

CALJIC 830.

Chas. F. Blackstock, Judge.

[fol. 52] PLAINTIFF'S REQUESTED INSTRUCTION No. 29

If the defendant Duncan committed murder as charged in the indictment, then, under the evidence in this case and as a matter of law, the witnesses Luis Moya and Augustine Baldonado were accomplices.

Given.

CALJIC 826.

Chas. F. Blackstock, Judge.

[fol. 53] PLAINTIFF'S REQUESTED INSTRUCTION No. 30

Evidence that the defendant planned to escape from jail after being charged with murder may be considered by the jury as tending to prove consciousness of guilt, but is not sufficient of itself to prove guilt. The weight to be given to such evidence and the significance, if any, to be attached to it, are matters for the jury to determine.

Given.

People v. *Burwell* (1955), 44 Cal. 2d 16, at p. 34.

Chas. F. Blackstock, Judge.

[fol. 54] PLAINTIFF'S REQUESTED INSTRUCTION No. 31

Evidence was offered in this case for the purpose of showing that the defendant Duncan committed another crime than the one of which she is accused and for which she is on trial in this action, namely, that she fraudulently procured an order of the Superior Court of this county purportedly annulling the marriage between Olga Duncan and Frank Duncan.

Such evidence was received for a limited purpose only: not to prove distinct offenses or continual criminality, but for such bearing, if any, as it might have on the question whether the defendant is innocent or guilty of murder as charged in the indictment.

You are not permitted to consider that evidence for any other purpose, and as to that purpose you must weigh such evidence as you do all other in the case.

The value, if any, of such evidence depends on whether or not it tends to show that there existed in defendant's mind a plan, scheme, system or design, into which fitted the commission of the offense for which she is now on trial.

Given.

CALJIC 33?

Chas. F. Blackstock, Judge.

[fol. 55] PLAINTIFF'S REQUESTED INSTRUCTION No. 32

In arriving at a verdict in this case, the subject of penalty or punishment is not to be discussed or considered by you, as that is a matter which under our law must be considered and determined in a separate proceeding.

Given.

CALJIC 9-A.

Chas. F. Blackstock, Judge.

[fol. 56] PLAINTIFF'S REQUESTED INSTRUCTION No. 33

The court has endeavored to give you instructions embodying all rules of law that may become necessary in guiding you to a just and lawful verdict. The applicability of some of these instructions will depend upon the conclusions you reach as to what the facts are. As to any such instruction, the fact that it has been given must not be taken as indicating an opinion of the court that the instruction will be necessary or as to what the facts are. If an instruction applies only to a state of facts which you find does not exist, you will disregard the instruction.

Given.

CALJIC 8.

Chas. F. Blackstock, Judge.

[fol. 57] PLAINTIFF'S REQUESTED INSTRUCTION NO. 34

The attitude and conduct of jurors at the outset of their deliberations are a matter of considerable importance. It is rarely productive of good for a juror, upon entering the jury room, to make an emphatic expression of his opinion on the case or to announce a determination to stand for a certain verdict. When one does that at the outset, his sense of pride may be aroused, and he may hesitate to recede from an announced position if shown that it is fallacious. Remember that you are not partisans or advocates, but rather judges. The final test of the quality of your service will lie in the verdict which you return to the court, not in the opinions any of you may hold as you retire. Have in mind that you will make a definite contribution to efficient judicial administration if you arrive at a just and proper verdict in this case. To that end, the court reminds you that in your deliberations in the jury room there can be no triumph excepting the ascertainment and declaration of the truth.

Given.

CALJIC 4.

Chas. F. Blackstock, Judge.

[fol. 58] PLAINTIFF'S REQUESTED INSTRUCTION NO. 35

Upon retiring to the jury room, you will select one of your number to act as foreman, who will preside over your deliberations and who will sign the verdict to which you agree. In order to return a verdict, it is necessary that all twelve of the jurors agree to the decision. As soon as all of you have agreed upon a verdict, you shall have it signed and dated by your foreman and then return with it to this room.

Given.

CALJIC 10.

Chas. F. Blackstock, Judge.

[fol. 59] DEFENDANT DUNCAN'S PROPOSED INSTRUCTION No. 1

It is your duty to try this case fairly and impartially between the prosecution and the defendant upon the evidence before you, and upon that alone. You must not permit any prejudices to enter into your deliberation as to the guilt or innocence of the defendant. The nature of the charge should not be permitted by you to influence your judgment one way or the other as to whether or not the defendant is guilty as charged. Our law presumes every person charged with crime innocent until proven guilty, and no person can be found guilty of any offense unless his guilt is first established to a moral certainty and an abiding conviction and beyond all reasonable doubt.

Requested by Defendant.

Refused.

Jury otherwise fully instructed.

Chas. F. Blackstock, Judge.

[fol. 60] DEFENDANT DUNCAN'S PROPOSED INSTRUCTION No. 2

You must not suffer yourself to be prejudiced against the defendants because of the fact that they are charged with this offense, and you must not suffer yourself to be led to convict any defendant for the purpose of deterring others from the commission of like offenses. No such argument or reason can be weighty enough to justify you in laying aside or ignoring that just and most humane rule of the law which says that you must find a defendant not guilty unless every fact necessary to establish his guilt has been proven to you beyond a reasonable doubt.

Requested by Defendant.

Refused.

Jury otherwise fully instructed.

Chas. F. Blackstock, Judge.

[fol. 61] DEFENDANT DUNCAN'S PROPOSED INSTRUCTION No. 3

You must disregard all of the testimony which the Court has ordered stricken from the record of the case. Such testimony is no longer evidence in the case, and you must not allow the testimony and evidence so stricken from the record to influence you in the slightest degree in arriving at your verdict.

Requested by Defendant.

Refused.

Jury otherwise fully instructed.

Chas. F. Blackstock, Judge.

[fol. 62] DEFENDANT DUNCAN'S PROPOSED INSTRUCTION No. 4

You are to consider the strong probabilities of the case. A conviction is justified only when such probabilities exclude all reasonable doubt as the same has been defined to you. Without it being restated or repeated, you are to understand that the requirement that a defendant's guilt be shown beyond a reasonable doubt is to be considered in connection with and as accompanying all the instructions that are given to you.

Requested by Defendant.

Refused.

Jury otherwise fully instructed.

Chas. F. Blackstock, Judge.

[fol. 63] DEFENDANT DUNCAN'S PROPOSED INSTRUCTION No. 5

A witness may be impeached by the party against whom he was called by contradictory evidence, or by evidence that he has made at other times statements inconsistent

with those to which he testified. If you believe that any witness has been successfully so impeached you are at liberty to consider such impeachment in determining the credibility of such witness, and the weight to be given to his or her testimony.

Requested by Defendant.

Refused.

Jury otherwise fully instructed.

Chas. F. Blackstock, Judge.

[fol. 64] DEFENDANT DUNCAN'S PROPOSED INSTRUCTION No. 6

If any facts or circumstances of this case can, by any reasonable construction, be explained or construed consistently with the innocence of any defendant, it is your duty to so construe them, and if the facts and circumstances and evidence in this case can be reasonably *be* construed as establishing the innocence of a defendant, it is your duty to so construe them and find her not guilty.

Requested by Defendant.

Refused.

Jury otherwise fully instructed.

Chas. F. Blackstock, Judge.

[fol. 65] DEFENDANT DUNCAN'S PROPOSED INSTRUCTION No. 7

Where two or more equally reasonable inferences may, in the light of all the evidence, be drawn from a fact shown, that inference leading to a conclusion of innocence should be accepted rather than one leading to a conclusion of guilt.

Requested by Defendant.

Refused.

Evidence largely direct C. F. B.

Chas. F. Blackstock, Judge.

[fol. 66] DEFENDANT DUNCAN'S PROPOSED INSTRUCTION No. 8

You are not bound to decide in conformity with any number of witnesses who do not produce conviction in your minds, against a lesser number of witnesses or against a presumption (such as the presumption that the defendant is innocent) or against other evidence satisfying your minds.

Requested by Defendant.

Refused.

Jury otherwise fully instructed.

Chas. F. Blackstock, Judge.

[fol. 67] DEFENDANT DUNCAN'S PROPOSED INSTRUCTION No. 9

The burden of proof is upon the prosecution. All presumptions of law, independent of evidence, are in favor of the innocence of an accused. It is not sufficient to establish a probability of guilt, though a strong one may be established, arising from the doctrine of chances, that the facts charged are more likely to be true than the contrary. If one set of facts or chain of circumstances lead to two opposing conclusions, one or the other of such conclusions must be wrong, and, therefore, if you entertain a reasonable doubt as to which of such conclusions the set of facts or chain of circumstances lead, a reasonable doubt would thereby be created, and the accused should be given the benefit of such reasonable doubt and a verdict of acquittal.

Requested by Defendant.

Refused.

Jury otherwise fully instructed.

Chas. F. Blackstock, Judge.

[fol. 68] DEFENDANT DUNCAN'S PROPOSED INSTRUCTION No. 10

It is incumbent upon the prosecution to prove every material allegation of the indictment and every material fact necessary to constitute the crimes charged. Nothing is to be presumed or taken by implication against any defendant.

Requested by Defendant.

Refused.

Jury otherwise fully instructed.

Chas. F. Blackstock, Judge.

[fol. 69] DEFENDANT DUNCAN'S PROPOSED INSTRUCTION No. 11

You are instructed that in this case, where it is the endeavor of the prosecution to prove the guilt of defendant by proof of circumstances tending in a greater or lesser degree to show the connection of said defendant with an alleged crime, that it is the duty of the prosecution to prove every essential and material circumstance and element of the guilt of defendant beyond a reasonable doubt. That although the proof in this case may show certain circumstances beyond a reasonable doubt, yet if in your opinion it fails to show any one essential or material element or circumstance of the guilt of any defendant beyond a reasonable doubt, then it is your duty to find such defendant not guilty.

Requested by Defendant.

Refused.

Jury otherwise fully instructed.

Chas. F. Blackstock, Judge.

[fol. 70] DEFENDANT DUNCAN'S PROPOSED INSTRUCTION No. 12.

When the case which has been made out by the People against a defendant rests entirely or chiefly on circumstantial evidence, and in any case before the jury may find a defendant guilty basing its finding solely on such evidence, each fact which is essential to complete a chain of circumstances that will establish the defendant's guilt must be proved beyond a reasonable doubt.

Requested by Defendant.

Refused.

Jury otherwise fully instructed.

Chas. F. Blackstock, Judge.

[fol. 71] DEFENDANT DUNCAN'S PROPOSED INSTRUCTION No. 13

A defendant may be convicted only of the crime with which he is charged in the Indictment. Therefore, if you find that the People have failed to establish any defendant's guilt of said crime beyond a reasonable doubt, it would be a miscarriage of justice for you to find him guilty of the crime alleged in the Indictment merely because you believed that other or different crimes may have been committed.

Requested by Defendant.

Refused.

Jury otherwise fully instructed.

Chas. F. Blackstock, Judge.

[fol. 72] DEFENDANT DUNCAN'S PROPOSED INSTRUCTION No. 14

The defendant, like any other witness, is presumed to speak the truth; and you must not disregard her testimony merely because she is a defendant, or merely because the

prosecution may have introduced a greater number of witnesses. If, after weighing the evidence, you should believe the testimony of the defendant, you must act in accordance with that belief, even though a number of witnesses may have testified to the contrary.

Requested by Defendant.

Refused.

Jury otherwise fully instructed.

Chas. F. Blackstock, Judge.

[fol. 73] DEFENDANT DUNCAN'S PROPOSED INSTRUCTION No. 15

Jurors have the right to test evidence and its weight by their knowledge and experience and their judgment derived from experience, observation and reflections. You are not bound to regard evidence precisely as given, but may consider its truth and weight by your knowledge of mankind, the affairs of life, and the motives which influence persons. These are proper and legitimate means of arriving at the truth in determining the issues of this case.

Requested by Defendant.

Refused.

Jury otherwise fully instructed.

Chas. F. Blackstock, Judge.

[fol. 74] DEFENDANT DUNCAN'S PROPOSED INSTRUCTION No. 16

At times throughout the trial the court has been called upon to pass on the question whether or not certain offered evidence might properly be admitted. You are not to be concerned with the reasons for such rulings and are not to draw any inferences from them. Whether offered evidence is admissible is purely a question of law. In admitting evidence to which an objection is made, the court does not

determine what weight should be given such evidence; nor does it pass on the credibility of the witness.

Requested by Defendant.

Refused.

Jury otherwise fully instructed.

Chas. F. Blackstock, Judge.

[fol. 75] DEFENDANT DUNCAN'S PROPOSED INSTRUCTION No. 17

A person may aid in the commission of an offense by doing innocently some act essential to its accomplishment. Yet this is not enough to establish his guilt of such crime, for the law requires that the evidence should establish beyond a reasonable doubt not only that defendant aided, but that she so aided with guilty knowledge and criminal intent.

Requested by Defendant.

Refused.

Jury otherwise fully instructed.

Chas. F. Blackstock, Judge.

[fol. 76] DEFENDANT DUNCAN'S PROPOSED INSTRUCTION No. 18

In considering whether a defendant aided and abetted in the commission of the crime charged, you are instructed that the definition of the word "abet", as so used, includes guilty knowledge of the wrongful purpose of the perpetrator of the crime and counsel and encouragement in the crime.

Therefore, before you may find a defendant guilty as an aider and abettor, you must be satisfied from the evidence beyond a reasonable doubt that such defendant not only aided in the commission of some act or acts essential to the commission of the crime charged, but that he so aided

with guilty knowledge of the perpetrator or perpetrators of said crime and with a criminal intent on his part in common with said person or persons.

Requested by Defendant.

Refused.

Jury otherwise fully instructed.

Chas. F. Blackstock, Judge.

[fol. 77] DEFENDANT DUNCAN'S PROPOSED INSTRUCTION No. 19

The interest of a defendant in the result of the action does not deprive him or her of the benefit of his or her own testimony. The law makes him or her a competent witness in his or her own behalf, and his or her testimony is entitled to full and fair consideration by you, the same as that of any other witness, and is sufficient in itself, if it raises in your minds a reasonable doubt as to whether the crimes charged were committed, to entitle the defendant to a verdict of not guilty at your hands.

Requested by Defendant.

Refused.

Jury otherwise fully instructed.

Chas. F. Blackstock, Judge.

[fol. 78] DEFENDANT DUNCAN'S PROPOSED INSTRUCTION No. 20

While it is the general rule that the uncontradicted testimony of a witness to a particular fact may not be entirely disregarded, this rule has its exceptions. The most positive testimony of a witness may be contradicted by the inherent improbability as to its accuracy contained in the witness's own statement of the transaction, or there may

be circumstances in evidence in connection with the matter which satisfy the jury of its falsity and if you believe from the evidence in this case that any witness has testified as to any fact or facts which are inherently improbable as shown by the witness's own statement or by the circumstances in evidence in connection with the matter, then and in that case you may reject such testimony and disregard the same.

Requested by Defendant.

Refused.

Jury otherwise fully instructed.

Chas. F. Blackstock, Judge.

[fol. 79] DEFENDANT DUNCAN'S PROPOSED INSTRUCTION No. 21

In respect to any attempt to impeach a witness by showing that on some former occasion he made a statement or statements that are contradictory of his testimony here, you are instructed that the evidence of any such contradictory statement is not received for the purpose of proving the truth of what then was said but only for the purpose of testing the credibility of the witness; you are permitted to consider such evidence only for that purpose, and you are the exclusive judges of the effect of such evidence on the witness's credibility.

Requested by Defendant.

Refused.

Jury otherwise fully instructed.

Chas. F. Blackstock, Judge.

[fol. 80] DEFENDANT DUNCAN'S PROPOSED INSTRUCTION No. 22

An accomplice is defined by the Penal Code of this State as being one who is liable to prosecution for the identical

offense charged against a defendant on trial in the action in which the testimony of the accomplice is given.

Requested by Defendant.

Refused.

Jury otherwise fully instructed.

Chas. F. Blackstock, Judge.

[fol. 81] DEFENDANT DUNCAN'S PROPOSED INSTRUCTION No. 23

If you find that any witness or witnesses in this case was or were accomplices as defined by law, then in determining whether or not the other evidence in the case is sufficient to constitute the corroboration required by law, and for your guidance in determining the sufficiency of such other evidence, you will consider the following rules which the law has provided:

1. You must, first, in considering such other evidence, entirely eliminate the testimony of such accomplice or accomplices.

2. Corroborative evidence, to be sufficient, must in and of itself, and without the aid of the testimony of the accomplice, tend to connect the defendant with the commission of the offense.

3. Such corroborative evidence must in and of itself, and independent of the testimony of the accomplice, tend to inculpate the defendant on trial with the commission of the offense charged.

4. The corroborative evidence must be substantial.

5. When such corroborating evidence, when considered either separately or collectively, is as consistent with the innocence of the accused as with his guilt, there is no legal corroboration.

6. Corroborating evidence which merely casts a suspicion —even a grave suspicion—on defendant, is legally insufficient.

7. Corroborating evidence which merely provides an opportunity on the part of defendant to have committed the crime, is not sufficient legally.

Refused.

Jury otherwise fully instructed.

Chas. F. Blackstock, Judge.

[fol. 82] DEFENDANT DUNCAN'S PROPOSED INSTRUCTION No. 24

The question as to whether or not any witness—other than such witness or witnesses as to whom the court has told you is or are an accomplice or accomplices—is an accomplice as a matter of law is a question of fact to be determined by you from all the circumstances and evidence introduced in this case and in accordance with the law as given you in these instructions.

Requested by Defendant.

Refused.

Jury otherwise fully instructed.

Chas. F. Blackstock, Judge.

[fol. 83] DEFENDANT DUNCAN'S PROPOSED INSTRUCTION No. 26

In determining whether any evidence offered in corroboration of the testimony of an accomplice tends to connect defendant with the commission of the offense charged, you must leave entirely out of consideration all the testimony of such accomplice, and from such corroborating evidence alone you must find the facts or circumstances, if any, which shall tend to connect defendant with the commission of the offense; and if, from such corroborating evidence alone and without reference to the testimony of the accom-

plice, you do not find any fact or circumstance tending to connect defendant with the commission of the offense charged, you must find the defendant not guilty, no matter how fully you may believe the testimony of such accomplice, and no matter how guilty, f[illegible] the testimony of the accomplice, you may believe def[illegible] to be.

Requested by Defendant.

Refused.

Jury otherwise fully instructed

Chas. F. Blackstock, Judge.

[fol. 84] DEFENDANT DUNCAN'S PROPOSED JURY INSTRUCTION No. 27

Murder is divided into two degrees—murder of the first degree and murder of the second degree. Every homicide is not murder, but whether or not a homicide is murder depends upon the circumstances under which it occurred. The question of whether a homicide is murder is one of fact to be determined by the jury from the evidence in the case and is not a matter of legal conclusion or presumption of law. If the jury in this case determines that a murder has been committed by any defendant it must find whether said murder be murder of the first or second degree, and whether it is murder of the first or second degree depends upon the presence or absence of deliberation and premeditation in the commission of the act. To constitute first degree murder the intent to kill must be the result of deliberate premeditation. It must be formed upon a pre-existing reflection and not upon a sudden heat of passion sufficient to preclude the idea of deliberation.

Under the evidence in this case the jury must be satisfied beyond a reasonable doubt and to a moral certainty, if they find that a murder has been committed by any defendant, that the commission of the act which caused the death of the party was deliberate and premeditated before it can find such defendant guilty of murder of the first degree. There is no presumption or intendment of law in favor of murder in the first degree. It is necessary for the People to satisfy

each member of the jury beyond a reasonable doubt that the act which caused the death of the party was intentional, deliberate and premeditated before the actual killing occurred to make it murder of the first degree. All other murders are of the second degree.

Refused.

Jury otherwise fully instructed.

Chas. F. Blackstock, Judge.

[fol. 85] DEFENDANT DUNCAN'S PROPOSED INSTRUCTION No. 28

Murder, whether in the first or second degree, is the unlawful killing of a human being, with malice aforethought, and unless the malice aforethought is shown beyond a reasonable doubt, the person doing such killing, in the absence of justifiable or excusable circumstances, could not be found guilty of any higher crime than manslaughter, which is the unlawful killing of human being without malice, and is of two kinds:

I—Voluntary—upon a sudden quarrel or heat of passion:
II—Involuntary—in the commission of an unlawful act, not amounting to a felony, or in the commission of a lawful act which might produce death in an unlawful manner or without due caution or circumspection.

Requested by Defendant.

Refused.

Jury otherwise fully instructed.

Chas. F. Blackstock, Judge.

[fol. 86] DEFENDANT DUNCAN'S PROPOSED INSTRUCTION No. 29

You are instructed that in arriving at a conclusion as to whether or not the defendant entertained any malice toward the person named in the indictment you must not con-

sider anything except the instruction of the court and the evidence which has been produced in this case. You are not at liberty to draw upon your imagination or to speculate as to the existence of matters or causes not introduced into evidence, and all your reasonings as to facts must be based solely upon the evidence introduced and not upon the probabilities, suspicions or speculative theories outside the case.

Requested by Defendant.

Refused.

Jury otherwise fully instructed.

Chas. F. Blackstock, Judge.

[fol. 87] DEFENDANT DUNCAN'S PROPOSED INSTRUCTION No. ——

The admissions or conduct, if any there be, of one defendant after the alleged commission of the offenses mentioned in the Indictment and when the other defendants were not present, cannot be considered by you as any evidence on the question of the guilt of any such defendant not present, and such evidence is limited to a consideration by you solely and alone as to the guilt or innocence of the defendant making such admission or whose conduct, if any there be, is connected therewith.

Refused.

Jury otherwise fully instructed.

Chas. F. Blackstock, Judge.

[fol. 88] DEFENDANT ELIZABETH DUNCAN'S PROPOSED INSTRUCTION No.

A conviction may not be had upon the testimony of an accomplice, nor any number of accomplices, unless it be corroborated by such other evidence as shall tend to connect the defendant with the commission of the offense.

An accomplice is one who is liable to prosecution for the identical offense charged against the defendant on trial.

To render a person an accomplice, he or she must in some manner knowingle and with criminal intent aid and abet or have advised or encouraged the commission of the criminal act charged.

Refused.

Jury otherwise fully instructed.

Chas. F. Blackstock, Judge.

[fol. 89] DEFENDANT ELIZABETH DUNCAN'S PROPOSED INSTRUCTION NO.

The corroboration of the testimony of an accomplice required by law is not sufficient if it merely shows the commission of the offense or some or all of the circumstances thereof, or if it does no more than raise a suspicion of the guilt of the defendant.

Refused.

Jury otherwise fully instructed.

Chas. F. Blackstock, Judge.

[fol. 90] DEFENDANT ELIZABETH DUNCAN'S PROPOSED INSTRUCTION NO.

The corroboration of the testimony of an accomplice required by law may not be supplied by the testimony of one or more other accomplices, but must come from other evidence of circumstances or from the testimony of one or more witnesses who were not accomplices.

Refused.

Jury otherwise fully instructed.

Chas. F. Blackstock, Judge.

[fol. 91] DEFENDANT ELIZABETH DUNCAN'S PROPOSED INSTRUCTION NO.

You are instructed that the witnesses, Barbara Reed, Diane Romero, Rudolph Romero, Rebecca Diaz, Ralph W. Winterstein, Luis Moya, Augestine Baldonado, Esparanzo Esquivel and Emma Ann Short, are, if you believe from the evidence to a moral certainty and beyond a reasonable doubt, that the crime of murder was committed, accomplices as a matter of law and you cannot convict the defendant, Elizabeth Duncan, upon their testimony alone, unless their testimony is corroborated in the manner and to the extent as I shall hereafter instruct you.

Refused.

Jury otherwise fully instructed.

Chas. F. Blackstock, Judge.

[fol. 92] DEFENDANT DUNCAN'S PROPOSED INSTRUCTION NO.

Certain evidence relating to subsequent conduct on the part of defendant Elizabeth Duncan has been offered in evidence for your consideration, under the claim of the prosecution that such evidence establishes a circumstance indicative of consciousness of guilt.

I instruct you that it will be your duty to carefully consider all of the evidence on both sides relating to this evidence, and that it is for you to determine whether or not the motive actuating such conduct was due to consciousness of guilt on the part of defendant or to an innocent or honest intent on her part.

If after such careful consideration of the evidence you are not satisfied beyond a reasonable doubt that said subsequent conduct upon her part was due to consciousness of guilt, then it will be your duty to reconcile such conduct with the presumption of innocence and disregard the same in determining the question of defendant's guilt or innocence.

Refused.

Jury otherwise fully instructed.

Chas. F. Blackstock, Judge.

[fol. 93] DEFENDANT DUNCAN'S PROPOSED INSTRUCTION NO.

You are instructed that oral admissions or statements of a defendant made out of court are to be received and considered with great caution. You cannot base a verdict of guilty upon statements or admissions of a defendant made out of court and not under oath, unless the essential elements of the offense charged are established by the prosecution by other evidence. In other words, statements or admissions made by a defendant out of court are not alone sufficient to establish the guilt of such defendant.

Refused.

Jury otherwise fully instructed.

Chas. F. Blackstock, Judge.

[fol. 94] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 95] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA IN BANK

Crim. 6490

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent,

v.

ELIZABETH ANN DUNCAN, Defendant and Appellant

OPINION—March 11, 1960

Luis Moya and Augustine Baldonado confessed to the police that they had killed Olga Duncan, the wife of defendant's son Frank, and in their confessions stated that defendant had hired them to do the killing. The three were indicted for murder and tried separately. Defendant pleaded not guilty and not guilty by reason of insanity. The jury found her guilty of murder in the first degree and fixed the punishment at death. Pursuant to stipula-

tion, the court sitting without a jury passed upon the sanity issue, and defendant was found to have been sane at the time of the commission of the offense. Her motion for a new trial was denied, and the appeal comes before us automatically under subdivision (b) of section 1239 of the Penal Code.[1]

[fol. 96] The facts stated below are summarized from the testimony of a number of witnesses. Moya and Baldonado testified regarding the arrangements defendant made with them and the manner in which they carried out the plan to kill Olga. Several persons testified concerning threats made by defendant against Olga, efforts of defendant to obtain assistance in killing her, and other circumstances connected with the crime.

In 1956 defendant moved to Santa Barbara with her 27-year-old son, Frank, an attorney who was then unmarried. Late in 1957 she was hospitalized as a result of taking an overdose of sleeping pills, and she explained to her doctor that she had taken them because she was afraid Frank would "leave her." While visiting defendant in the hospital, Frank met Olga, who was working there as a nurse. Defendant objected to Frank's seeing Olga and telephoned her almost daily for three months. During the course of these calls, which defendant discussed with a friend, Mrs. Emma Short, or made in her presence, she told Olga to "leave her son alone" and frequently threatened to kill her if she did not stop seeing him. On one occasion, when Olga said that she and Frank were going to be married, defendant replied, "You'll never marry my son, I'll kill you first."

[fol. 97] Frank and Olga were secretly married on June 20, 1958, and when defendant learned of the marriage she declared that she would not allow them to live together. Frank stayed at defendant's home until the end of June, visiting Olga in her apartment. During one of these visits defendant knocked on the door and angrily demanded that Frank come home. A quarrel ensued, and he left with her.

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[1] After the trial of defendant, Moya and Baldonado pleaded guilty to murder in the first degree, and their punishment was fixed at death. (People v. Moya, post, p. ——; People v. Baldonado, post, p. ——.)

A few days later he started to live with Olga at another apartment, keeping the new address secret from defendant.

About the middle of July 1958 defendant told Mrs. Barbara Reed, whom she had known for several years, that Olga had become pregnant by another man and was trying to "frame" Frank. She offered Mrs. Reed $1,500 to assist her in killing Olga. Mrs. Reed replied that she would think the matter over, and later she informed Frank of the proposal his mother had made to her. Shortly thereafter Frank moved back to defendant's home.

In the early part of August defendant arranged with an ex-convict, Ralph Winterstein, to assist her in carrying out a fraudulent plan for the annulment of the marriage between Frank and Olga. Defendant posed as Olga and Winterstein as Frank. After a brief uncontested hearing in which Winterstein, as the plaintiff, testified that Olga [fol. 98] had not lived with him since their marriage, that she refused to do so, and that she had told him she had never intended "to go through with the marriage," a decree was granted to the plaintiff. Defendant later persuaded Mrs. Short to propose to Winterstein that he "take care of Olga." Winterstein refused but did not report the incident because he was afraid of getting into trouble as a result of the fraudulent annulment.

In the middle of August defendant discovered where Olga was living and gained admittance to the apartment in her absence, apparently for the purpose of discovering whether any of Frank's clothes were there. She said to the manager of the apartment house, "She is not going to have him. I will kill her, if it is the last thing I do."

Defendant told Mrs. Diane Romero, whose husband Rudolph was a client of Frank, that Olga was blackmailing Frank and asked her to help "get rid" of Olga. At defendant's request Mrs. Romero went to Olga's apartment to "look the place over," and Olga answered the door. Mrs. Romero recognized her as a nurse who had cared for her several years earlier, and she left after a short visit. Thereafter defendant offered Rudolph Romero money to "get rid" of Olga, and he refused.

[fol. 99] During the time that she was seeking the assistance of the Romeros, defendant met Mrs. Rebecca Diaz, in whose house the Romeros lived. Defendant said that Olga

was threatening her and demanding money, and she asked Mrs. Diaz to help find a man to "get her out of town." Mrs. Diaz agreed to notify defendant if she found anyone. Later, after defendant had met Moya and Baldonado, she telephoned Mrs. Diaz and asked, "Becky, do you remember what we talked about?" Mrs. Diaz replied that she did, and defendant said, "Well, forget about it. I won't need you any more. It will be today or never."

On November 12, 1958, defendant went with Mrs. Short to the Tropical Cafe in Santa Barbara. Mrs. Esperanza Esquivel, who owned the cafe, and her husband had been charged with receiving stolen property, and Frank, as their attorney, had obtained a dismissal of the case against her and was seeking probation for her husband, who had pleaded guilty. Defendant told Mrs. Esquivel that Olga was blackmailing her and had threatened to throw acid in Frank's face, and she asked whether Mrs. Esquivel had any friends who would help "get rid" of Olga. Mrs. Esquivel replied that "there were some boys" but she did not know whether they would want to talk to defendant.

[fol. 100] The next day defendant, accompanied by Mrs. Short, returned to the Tropical Cafe and was introduced to Moya and Baldonado by Mrs. Esquivel. Defendant told the men that her son was being blackmailed by Olga and said that she wanted to "get rid" of her. They discussed how much this would be worth to defendant and agreed that she would pay $3,000 when the "job" was done and $3,000 within three to six months. They considered several plans and finally decided that Moya and Baldonado would kidnap Olga, take her across the border and kill her in Tijuana. Moya said that he and Baldonado would need money for transportation, a weapon and gloves. Defendant left for a while and on her return went to the kitchen with Moya where she paid him $175 she had obtained by pawning some rings. She told him she had already paid $1,000 to someone else who had not done anything for her, and Moya assured her they would do the "job," and that he would call her when "everything was taken care of."

Moya and Baldonado hired a car from Mrs. Sara Contreras, borrowed a pistol from a friend, and purchased some ammunition, gloves, and adhesive tape. On the eve-

ning of November 17, 1958, they drove to Olga's apartment. When Olga came to the door, Moya told her that her [fol. 101] husband was in the car, drunk, and asked for help, and she went with him to the car. Baldonado was then in the back seat pretending that he was Frank. When Olga opened the rear door, Moya hit her on the back of the head with the pistol and Baldonado pulled her into the car. On their way out of Santa Barbara, they drove to the beach, where they stopped because Olga was screaming and struggling. While Baldonado held her, Moya struck her on the head with the pistol, knocking her unconscious and breaking the handle of the gun. Baldonado then "tied her up" with the tape, and they continued on out of town.

A short time later they had trouble with the car, and, instead of following their original plan of going to Mexico, they drove into the mountains near Ojai, in Ventura County. They dragged Olga out of the car and down the side of a hill to a culvert that ran under the road. The pistol had been damaged so that it could not be fired, and Mayo and Baldonado took turns strangling her. After a while they could not feel her pulse, and they dug a hole and buried her.

On returning to Santa Barbara, Moya and Baldonado hid their bloody clothes and the seat covers of the car. They tried to clean the car by sweeping it and spraying lacquer to hide blood spots. The next day they told Mrs. [fol. 102] Contreras that the seat covers had been burned by a cigarette and that they would fix them or give her money for repairs.

Moya informed defendant by telephone that they had performed their "part of the bargain." She said that she had not been able to draw any money out of the bank because the police had been inquiring about Olga's disappearance. Defendant cashed a check which Frank had given her to pay for a typewriter, and she met Moya by appointment in a downtown store in Santa Barbara, where she handed him an envelope containing $150. Later, at defendant's request, Mrs. Short left an envelope for Moya with the cashier of a restaurant. The envelope, which was addressed to "Dorothy," contained $10, and Moya obtained it by saying it was for his aunt.

During the period that she was making payments to Moya and Baldonado, defendant was questioned by Frank about the check he had given her to pay for a typewriter, and she told him she was being blackmailed. Frank informed the police and said that he was afraid defendant was involved in Olga's disappearance and was being blackmailed for that reason. The investigation which followed resulted in the confessions by Moya and Baldonado, and defendant's [fol. 103] arrest on a charge of murder. Olga's body was disinterred on December 21, and an autopsy surgeon found that Olga had been pregnant and that her death was caused by head wounds, strangulation, or suffocation such as would be produced by being buried alive.

Defendant took the stand in her own behalf and denied participating in the crime or making any of the solicitations testified to by the various prosecution witnesses. She admitted being in the Tropical Cafe on November 12 but claimed that she left after a social conversation with Mrs. Esquivel. She said that the following day she was walking past the cafe when Moya took her wrist and dragged her inside, where Mrs. Esquivel, in the presence of Moya and Baldonado, expressed dissatisfaction with Frank's legal services and demanded the return of the fee paid to him, threatening to kill him and defendant if the money was not returned. She asserted that the payments to Moya were made because of these threats.

The evidence is amply sufficient to support the jury's determination that defendant was guilty of murder in the first degree. The principal questions presented are whether the trial court erred in denying a change of venue, in ruling upon challenges of prospective jurors for cause, in [fol. 104] refusing to instruct the jury that Mrs. Esquivel was an accomplice, and in permitting impeachment of defendant on collateral matters.

Defendant's motion for a change of venue from Ventura County was initially made and denied prior to the proceedings for the selection of a jury and was unsuccessfully renewed after the jury was selected but before it was sworn. In support of her motion she filed affidavits to the general effect that many persons in Ventura County had indicated a belief that defendant was guilty and had ex-

pressed the opinion that her right to a fair and impartial trial was prejudiced as a result of wide publicity given to the case and to statements made by public officials. The affidavits were accompanied by a number of articles from newspapers circulated in the county which showed, among other things, that much of the testimony before the grand jury had been published in daily installments and that public officials, including the district attorney, had made statements to the press about the case while it was being investigated. One of the newspaper articles stated that at the time of arraignment there were about 1,000 persons in the courtroom and adjoining corridors, that many of the spectators were hostile to defendant, and that one of them attempted to strike her.

[fol. 105] Defendant placed particular emphasis on newspaper reports of statements made by the district attorney during the investigation in the latter part of December 1958. Before the indictment was returned, an article quoted the district attorney as saying, "The brutal, calculated, revolting killing for hire of Olga Duncan is one of a number of horrible crimes which have recently been committed in California. . . . I simply can not understand how some of our leaders, in the face of these events, can seriously contend that the death penalty is not appropriate punishment for the perpetrators of such a crime." A few days after defendant was indicted, an article quoted the district attorney at length with respect to why he was going to ask for the imposition of the death penalty. Among his remarks were statements that the "most pertinent point in the death penalty" was retribution, that rehabilitation statistics were "pretty sad," that the chances of rehabilitating the three persons charged with the crime were "awfully slim," that he did not want to "take that kind of chance," and that he did not have any qualms about the prospect of "putting California's third woman in the gas chamber." Other statements which the district attorney was reported to have made were that he had evidence this was not the first time defendant sought to hire someone to kill Olga, that, as far as he was concerned, [fol. 106] Moya and Baldonado were not blackmailing defendant but were demanding "the pay they were promised

for the job they did," and that defendant's jealousy of Olga was the major motive for the crime.[2]

In opposition to defendant's motion the district attorney filed affidavits averring that he was unaware of any person who had stated he could not act fairly and impartially as a juror at the trial, and that in his opinion a fair trial could be had notwithstanding the publicity given to the case. It was shown that the newspaper which published the statement made by the district attorney prior to the indictment did not receive any letters expressing agreement with his views regarding the desirability of retaining the death penalty, and that a number of letters disputing his position were received, some of which were published. An affidavit by the undersheriff of Ventura County averred that no more than 200 persons were in the courtroom and the corridor at the time of arraignment, that he had made numerous inquiries about the asserted effort of a spectator to strike defendant, and that the only person whose name was given to him as having seen the incident was an investigator for defendant. It was also shown that there were approximately 170,000 people in Ventura County. The [fol. 107] arrangements for the crime were made in Santa Barbara County, and neither the victim nor defendant lived in Ventura County.

A number of considerations thus militated against the conclusion that the publicity complained of had the effect of creating throughout the county a state of mind requiring a change of venue. Even if it be assumed that many persons formed opinions unfavorable to defendant as a result of what was published, it does not follow that persons without such views could not be found to act as jurors or that those who had adverse opinions would be unable to set them aside and try the case fairly on the basis of the evidence to be produced in court. (See Pen. Code, § 1076.) Defendant's motion for a change of venue was addressed to the sound discretion of the trial judge, and

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[2] In his oral argument before this court the district attorney denied making most of the statements attributed to him and said that he did not condone the making of such statements by a prosecuting official.

we cannot say that he abused his discretion in denying it. (See People v. Burwell, 44 Cal. 2d 16, 30.)

The court disallowed challenges for actual bias made by defendant under section 1073 of the Penal Code to four prospective jurors (J. T. Porter, S. M. Flynn, Mrs. Susie Saavedra and Mrs. Erma Behrens.)[3] These jurors were [fol. 108] removed by peremptory challenges exercised by defendant, but later, before a jury was obtained, she exhausted the 20 peremptory challenges available to her, and she claims that she would have used such challenges, had they not been exhausted, to remove three jurors who tried the case, even though she did not challenge those jurors for cause. We have concluded that the court did not abuse its discretion in refusing to remove the four prospective jurors who were challenged for actual bias, and this makes it unnecessary for us to consider whether the rulings could have prejudiced defendant if they had been erroneous.

The statements made by the four challenged jurors on voir dire may be summarized as follows:

Juror Porter stated that as a result of reading newspapers, hearing radio and television broadcasts, and discussing the case with 15 or 20 people, he had formed an opinion unfavorable to defendant regarding her guilt. He did not know if the people with whom he talked had personal knowledge of the case, but he was "sure they didn't or they would have said so." In response to questions by defense counsel, he said that evidence would be required to overcome his opinion, and in the absence of evidence he would not want his wife to be tried by jurors with his present frame of mind and did not think she would receive a [fol. 109] fair and impartial verdict from such jurors. In response to questions by the district attorney and the

[3] Section 1073 of the Penal Code provides: "Particular causes of challenge are of two kinds: . . . . Second. For the existence of a state of mind on the part of the juror in reference to the case, or to either of the parties, which will prevent him from acting with entire impartiality and without prejudice to the substantial rights of either party, which is known in this code as actual bias."

court, he stated that he would follow an instruction by the court to disregard what he had read and heard, and he would base his verdict solely upon the evidence presented in court. He would also follow an instruction that in order to convict defendant he must be persuaded of her guilt by the evidence beyond a reasonable doubt. He said further that he would act fairly and impartially, and on the presentation of evidence he would be satisfied to have himself or his wife tried by a juror with his frame of mind.

Juror Flynn said that he had formed an opinion adverse to defendant concerning her guilt as a result of reading newspaper articles, hearing radio and television broadcasts, and discussing the case with many people. He did not know whether the people with whom he talked had personal knowledge of the case; he thought they were relating what they had read. In response to questions by defense counsel he said that evidence would be required to overcome his opinion, and, if his wife were on trial, he would not be willing to trust her fate to 12 jurors with his present frame of mind and did not think such jurors could render a fair and impartial verdict. He stated, however, that he felt [fol. 110] he could completely set aside his opinion, that it would not have a tendency to influence his verdict, and that it would not prevent him from acting fairly and impartially. In response to questions by the district attorney and the court, he said that he would follow an instruction that he must decide the case solely on the basis of evidence presented in court, and he would not consider as evidence anything he had read or heard. He further stated he would require the district attorney to establish defendant's guilt beyond a reasonable doubt, would act fairly and impartially, and would be willing to have jurors with his frame of mind try himself or a member of his family.

Juror Saavedra stated that, as a result of reading newspapers and talking about the case with her family, she had formed an opinion as to guilt unfavorable to defendant. In response to questions by defense counsel she said that evidence would be required to overcome her opinion, that she did not know whether she could set aside her opinion completely, that she did not feel jurors with her present frame of mind could act impartially, and that, assuming

she served as a juror and after hearing the evidence she entertained a reasonable doubt as to defendant's guilt, she would have some hesitancy in resolving the doubt in [fol. 111] defendant's favor even though the court told her it was her duty to do so. In response to questions by the district attorney and the court she said that if she served on the jury she would set aside her opinion entirely and base her verdict solely upon the evidence presented in court, that she would follow an instruction not to vote defendant guilty unless convinced by the evidence beyond a reasonable doubt, and that she would be fair and impartial and would be willing to be tried by jurors with her frame of mind.

Juror Behrens stated that she had formed an opinion that defendant was guilty from reading newspapers and discussing the case with quite a few people including persons who came into the cleaning establishment where she was employed. She did not believe or disbelieve what any of them said. In response to questions by defense counsel she stated that evidence would be required to overcome her opinion, and she did not know whether her opinion would influence her verdict but felt it would prevent her from acting fairly and impartially. She would not want to trust her fate or that of a loved one to 12 jurors with her present frame of mind and did not feel such jurors could return an absolutely fair and impartial verdict. In response to questions by the district attorney she said her frame of [fol. 112] mind was such that, for purposes of voting a verdict, she would set aside her opinion and decide the case solely upon the basis of the evidence and instructions of the court. She would follow an instruction that guilt must be proved beyond a reasonable doubt before defendant could be convicted, and she would act fairly and impartially notwithstanding her opinion. She also stated that she would be satisfied to have someone near and dear to her tried by jurors who, like herself, could and would set aside their opinions and decide the case solely upon the evidence and the instructions of the court.

Section 1076 declares that a juror is not disqualified for actual bias because he has formed an opinion as to guilt founded upon public rumor, statements in public journals, circulars, or other literature, or common notoriety, pro-

vided it appears to the court that he will act fairly and impartially.[4] This statute was obviously enacted in [fol. 113] recognition of the fact that some cases are given widespread publicity in advance of trial and that persons who may be called upon to act as jurors may read or hear what is reported, discuss the subject with others, and even form opinions as to the guilt of the accused. The statements of the four challenged jurors show that their opinions were based upon information obtained from newspapers, radio, or television and upon discussions with various people. There is nothing in the record to suggest that anyone with whom they talked had personal knowledge regarding the case, and their statements indicated they did not understand that these people had such knowledge. The crime was obviously a topic of conversation by the public generally, and such cases are usually discussed upon the basis of news reports and rumor. Only a few people speak from personal knowledge, and, when they do, that fact is almost invariably made clear. The trial court could conclude that the comments made by the persons with whom the four jurors discussed the case were founded on news reports or rumor.

When the jurors were questioned by defense counsel, they answered that they had formed an opinion defendant was guilty and that it would require evidence to overcome [fol. 114] their opinion. As we have seen, however, the opinions were based on news reports and rumor, and, when questioned by the district attorney and the judge, the jurors stated that they would base their verdict solely on the evidence received in court and the instructions given them and

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[4] Section 1076 of the Penal Code provides in part: ". . . In a challenge for actual bias, the cause stated in the second subdivision of section one thousand seventy-three must be alleged; but no person shall be disqualified as a juror by reason of having formed or expressed an opinion upon the matter or cause to be submitted to such jury, founded upon public rumor, statements in public journals, circulars, or other literature, or common notoriety; provided, it appear to the court upon his declaration, under oath or otherwise, that he can and will, notwithstanding such an opinion, act impartially and fairly upon the matters to be submitted to him. . . ."

that they would act impartially notwithstanding the opinions they had formed. Where jurors on voir dire have made conflicting statements similar to those involved here, it is a question of fact for the trial judge whether they can act impartially, and in such circumstances rulings denying challenges for bias have uniformly been upheld in this state as well as by the United States Supreme Court. (People v. Daugherty, 40 Cal. 2d 876, 889-890; People v. Wallace, 6 Cal. 2d 759, 764-765; People v. Edwards, 163 Cal. 752, 756-757; People v. Loper, 159 Cal. 6, 10-11; People v. Scott, 123 Cal. 434, 435; cf. Holt v. United States, 218 U.S. 245, 248; Spies v. Illinois, 123 U.S. 131, 170 et seq.) The record supports the conclusion of the trial judge that the four challenged jurors would be fair and impartial.

The trial court did not abuse its discretion in removing jurors Sechrest and Gisler, who were challenged by the district attorney when they stated that they did not believe [fol. 115] in capital punishment. (Pen. Code, § 1074, subd. 8; People v. Riser, 47 Cal. 2d 566, 573-576.)

The trial court refused to give an instruction requested by defendant that Mrs. Esquivel was an accomplice. Instead, the jury was instructed as to what constitutes an accomplice and what corroboration is required of an accomplice's testimony, and it was told that whether or not any witness other than Moya and Baldonado was an accomplice was for the jury to determine from all the testimony and the circumstances as shown by the evidence. An accomplice is one "who is liable to prosecution for the identical offense charged against the defendant." (Pen. Code, § 1111.) In order to come within this definition a person must have guilty knowledge and intent with regard to the commission of the crime. (Cf. People v. Lima, 25 Cal. 2d 573, 576-578; People v. Shaw, 17 Cal. 2d 778, 799-800.) The requested instruction that Mrs. Esquivel was an accomplice could properly be given only if undisputed evidence established the complicity. (People v. Davis, 43 Cal. 2d 661, 672; People v. Barclay, 40 Cal. 2d 146, 151-153.)

Mrs. Esquivel testified that when defendant asked her if she had friends who would help "get rid" of Olga she replied that "there were some boys" but she did not know [fol. 116] if they would talk to defendant. She told Moya and Baldonado that defendant wanted to see them about

"a job" and subsequently introduced her to them. She also testified that she did not believe defendant wished to find someone who would "get rid" of Olga and that she did not want Moya and Baldonado to "do that kind of a job." She told them they could talk to defendant or not as they pleased, and she did not tell them defendant wanted them to "get rid" of Olga. Thus it was a question of fact whether she had the guilty knowledge and intent necessary to make her an accomplice, and the trial court did not err in refusing to instruct the jury as a matter of law that she was an accomplice.

Defendant testified on direct examination that she was married at one time to F. M. Lowe and later to F. P. Duncan. She testified further that her daughter Patricia was the issue of her marriage to Duncan and that her son Frank, who was the issue of her marriage to Lowe, changed his name to Duncan. The district attorney, over objection, sought to show by his questioning of defendant that at the time of her marriage to Lowe, three prior marriages had not been dissolved and that the Lowe marriage had not been terminated when she married Duncan. [fol. 117] The People were also permitted, over objection, to introduce court records which showed that defendant had defaulted in an annulment action brought by Duncan against her and had thus failed to deny an allegation of the complaint that she was the wife of another when she married Duncan.

The legality of defendant's marriages to Lowe and Duncan was not relevant to any issue in the case, and attacking the credibility of defendant on the point was of little, if any, importance to the prosecution. On the other hand, the questioning by the district attorney had an obvious tendency to degrade defendant since it injected into the case insinuations that she had committed bigamy and adultery and was the mother of two illegitimate children. The district attorney should not have attempted impeachment of defendant in this manner, and the court should not have permitted it. However, defendant's answers to the questions were favorable to her and tended to minimize any harmful effect. She testified that she had not entered into one of the three alleged prior marriages, that the two others had been terminatetd when she married Lowe, that

he divorced her before she married Duncan, and that her default in the annulment action brought by Duncan was due to a lack of interest in him.

[fol. 118] The district attorney was also permitted to question defendant, over objection, as to whether Frank had made his home with her during her marriages to several men. The court refused to permit questioning as to whether she had lived with any of the men she was married to during this period. The district attorney was further allowed, over objection, to cross-examine defendant as to whether she had previously lied about her age. On his motion all questions and answers on these subjects were stricken from the record, and the jury was instructed to disregard them. Defendant contends that these questions tended to degrade and debase her and that the error was not cured by the admonition of the court. Although it is not always possible to cure error in this manner, for example, where the objectionable evidence goes to the main issue and the proof of guilt is not clear and convincing, the jury, under ordinary circumstances, is presumed to obey the court's instructions and disregard the evidence. (People v. Hardy, 33 Cal. 2d 52, 61-62.) Even if we accept defendant's contentions that the evidence objected to was inadmissible, it is clear that it did not go to the main issue in the case, and we must assume that the jury obeyed the court's instructions to disregard it.

[fol. 119] There was abundant evidence of defendant's guilt, and we are satisfied from an examination of the entire record that there was no miscarriage of justice. (Cal. Const., art. VI, § 4½.)

The judgment and the order denying a new trial are affirmed.

Gibson, C. J.

We concur: Traynor, J., Schauer, J., Spence, J., McComb, J., Peters, J., White, J.

[fol. 120] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA, IN BANK

April 10, 1960

Crim. No. 6490

PEOPLE,

v.

DUNCAN

ORDER DENYING REHEARING

Appellant's petition for rehearing Denied.

Gibson, Chief Justice.

[fol. 121] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1959

Nos. 1071 Misc., 1074 Misc., and 1075 Misc.

AUGUSTINE BALDONADO, Petitioner,

vs.

CALIFORNIA;

LUIS ESTRADA MOYA, Petitioner,

vs.

CALIFORNIA; and

ELIZABETH ANN DUNCAN, Petitioner,

vs.

CALIFORNIA

ORDER ALLOWING CERTIORARI—June 27, 1960

On Petitions for Writs of Certiorari to the Supreme Court of the State of California.

On Consideration of the motions for leave to proceed in forma pauperis and of the petitions for writs of certiorari,

it is ordered by this Court that the motions to proceed in forma pauperis be, and the same are hereby, granted; and that the petitions for writs of certiorari be, and the same are hereby, granted limited to the following questions:

1. Was petitioner's right to the trial guaranteed by the Due Process Clause of the XIV Amendment violated in view of the conduct of the District Attorney, the resulting publicity, and the other circumstances under which the trial was held?

2. Was there a violation of petitioner's right to a fair trial, as guaranteed by the Due Process Clause of the XIV Amendment of the Constitution of the United States of America, where in a trial of a capital offense by jury, the trial court permitted to remain in the jury box and sit in judgment, three jurors who had entered the jury box with [fol. 122] fixed opinion as to petitioner's guilt, and retained such opinions while being examined on voir dire?

The cases are transferred to the appellate docket as Nos. 1045, 1046, and 1047 and are consolidated with a total of three hours for oral argument.

The orders of Mr. Justice Douglas of June 10, 1960, staying the execution of the death sentences are continued pending the issuance of the mandates of this Court.

And it is further ordered that the duly certified copy of the transcripts of the proceedings below which accompanied the petitions shall be treated as though filed in response to such writs.

June 27, 1960.

[fol. 1] Ventura, California, February 16, 1959; 10:00 o'clock A.M.

CALLING OF PROSPECTIVE JURORS

The Court: Call the names of this jury panel.

The Clerk: Ladies and gentlemen, as I call your names, will you please state the number of miles you traveled one way to the courthouse this morning. If you live in Ventura, just state Ventura. If any of you require letters for your employers, let me know when I call your name and we will mail you a letter. If you receive parking tickets for overtime parking, present them to our Bailiff and he will take care of the matter.

Just answer by saying the number of miles you traveled one way to the courthouse. If you live in Ventura, just state Ventura, if you please.

Ben Akers, Jr.

The Prospective Juror: Simi. I don't know just how many miles.

The Clerk: Kenneth C. Allen.

The Prospective Juror: Eleven miles.

The Clerk: Walter R. Alley.

The Prospective Juror: Fourteen miles.

The Clerk: Treva L. Allred.

The Prospective Juror: Twenty-five miles.

The Clerk: Mrs. Bernice M. Arend.

The Prospective Juror: Thirty-four miles.

The Clerk: Howard R. Arnold.

[fol 2] The Prospective Juror: Twelve miles.

The Clerk: Gerry F. Baptiste.

The Prospective Juror: Seventeen miles.

The Clerk: Martha Baradat.

The Prospective Juror: Ten miles.

The Clerk: B-a-ra-d-a-t.

The Prospective Juror: Ten miles.

The Clerk: Thank you. Afred F. Bartel of Camarillo. Alfred F. Bartel, B-a-r-t-e-l, Camarillo.

(No response.)

The Clerk: Mrs. Evelyn H. Bartels.

The Prospective Juror: Twenty-six miles.

The Clerk: Norman Eugene Batten.

The Prospective Juror: Five miles.
The Clerk: Thomas Hesch.
The Prospective Juror: Eighteen miles.
The Clerk: Loretta T. Beall.
The Prospective Juror: Thirty miles.
The Clerk: Forty?
The Prospective Juror: Thirty.
The Clerk: Carl J. Beasley. Carl J. Beasley of Santa Paula, West Telegraph Road.

(No response.)

The Court: No flashlight cameras may be used in the courtroom. If there is a flashlight for any camera, you can't use it in the courtroom.

[fol. 3] The Clerk: Erma S. Behrens.
The Prospective Juror: Ten miles.
The Court: If you don't use a flashlight, it is all right. Go ahead.
The Clerk: Mrs. B. Jewel Berch.
The Prospective Juror: Twenty-six miles.
The Clerk: Maurice E. Bisson.
The Prospective Juror: Twenty-six miles and a letter, please.
The Clerk: All right, sir. Anthony Bollero.
The Prospective Juror: Ventura.
The Clerk: Earl G. Bond.
The Prospective Juror: Twenty-two.
The Clerk: Charles W. Borse of Thousand Oaks, Charles W. Borse, B-o-r-s-e.

(No response.)

The Clerk: Donald D. Bourne.
The Prospective Juror: Fifteen.
The Clerk: Walter W. Boynton.
The Prospective Juror: Fifteen, Santa Paula.
The Clerk: Fred Brown.
The Prospective Juror: Ventura.
The Clerk: Robert Loring Burdick.
The Prospective Juror: Ventura.
The Clerk: Zelda W. Burns.
The Prospective Juror: Thirty.

[fol. 4] The Clerk: Charles D. Bushman.
The Prospective Juror: Fifteen.

The Clerk: Leva C. Calhoon.
The Prospective Juror: Thirty-five.
The Clerk: Sorry?
The Prospective Juror: Thirty-five.
The Clerk: Clyde H. Campbell.
The Prospective Juror: Ventura.
The Clerk: Leo J. Canelli from Oxnard. Leo J. Canelli, C-a-n-e-l-l-i.

(No response.)

The Clerk: Mae W. Capper.
The Prospective Juror: Ventura.
The Clerk: Charles J. Carmack.
The Prospective Juror: Ten miles.
The Clerk: Earl S. Casteel.
The Prospective Juror: Twenty-five.
The Clerk: Joseph S. Caunt, C-a-u-n-t, Jr.
The Prospective Juror: Ventura.
The Clerk: Russell F. Chambers.
The Prospective Juror: Fifteen.
The Clerk: Albert L. Chunn.
The Prospective Juror: Twenty-four.
The Clerk: T. G. Conner.
The Prospective Juror: Twenty-six.
The Clerk: Mrs. Mary P. Colborn.
[fol. 5] The Prospective Juror: Fifteen.
The Clerk: Hayden K. Collins.
The Prospective Juror: Ventura.
The Clerk: Edward L. Cordell.
The Prospective Juror: Nine.
The Clerk: Mrs. John H. Coultas.
The Prospective Juror: Twelve miles.
The Clerk: Norman E. Cowan.
The Prospective Juror: Ventura.
The Clerk: Harry J. Decker.
The Prospective Juror: Ventura.
The Clerk: Mrs. Mildred R. Dewey.
The Prospective Juror: Twenty-six.
The Clerk: Clara H. Dodds.
The Prospective Juror: Ventura.
The Clerk: Jehsie S. Dodson.
The Prospective Juror: Ventura.
The Clerk: Mrs. Grace E. Dominy.

The Prospective Juror: Thirty-five.
The Clerk: Paul Thomas Donnally.
The Prospective Juror: Ventura.
The Clerk: Theycol Dorman.
The Prospective Juror: Twenty-six.
The Clerk: Floyd F. Dungan.
The Prospective Juror: Twenty-four.
The Clerk: Dorothy P. Durr.
[fol. 6] The Prospective Juror: Ten.
The Clerk: James Calvin Dye.
The Prospective Juror: Twenty-two. I'll need a letter.
The Clerk: Fred Lee Eads.
The Prospective Juror: Ten.
The Clerk: Richard B. Elkins.
The Prospective Juror: Twenty-five.
The Clerk: Lawrence E. Everett.
The Prospective Juror: Sixteen.
The Clerk: Ila Jean Farmer.
The Prospective Juror: Fifteen.
The Clerk: August C. Fenner.
The Prospective Juror: Fifteen.
The Clerk: Goldie M. Ferry.
The Prospective Juror: Ventura.
The Clerk: Mrs. Sabrine Finnerty.
The Prospective Juror: Twenty-six.
The Clerk: Stephen M. Flynn.
The Prospective Juror: Nine.
The Clerk: Jan Fosselius.
The Prospective Juror: Ventura.
The Clerk: August Fowler.
The Prospective Juror: Twenty-five.
The Clerk: Leandro Franco.
The Prospective Juror: Ten.
The Clerk: John Freiberg, Jr.
[fol. 7] The Clerk: John Freiberg, Jr.
The Prospective Juror: Ventura.
The Clerk: Forest F. Fuger, F-u-g-e-r. Forest F. Fuger from Oxnard.

(No response.)

The Clerk: Esther L. Garner.
The Prospective Juror: Ventura.
The Clerk: Mrs. Lena M. Garrison.

The Prospective Juror: Ten miles.
The Clerk: Lydia Gisler.
The Prospective Juror: Ten miles.
The Clerk: Paul D. Gosney.
The Prospective Juror: Twelve.
The Clerk: Hans Granckow.
The Prospective Juror: Ventura.
The Clerk: Margaret K. Good.
The Prospective Juror: Simi.
The Clerk: Ellen E. Guthrie.
The Prospective Juror: Twenty-five.
The Clerk: Mary Ellen Hall.
The Prospective Juror: Seven.
The Clerk: Vera Lorraine Hall.
The Prospective Juror: Ten.
The Clerk: Mrs. Mildred E. Halter.
The Prospective Juror: Ten.
The Clerk: Isabelle C. Hart.
[fol. 8] The Prospective Juror: Ventura.
The Clerk: Ray C. Havens.
The Prospective Juror: Thirteen.
The Clerk: George W. Hawkins.
The Prospective Juror: Ten.
The Clerk: Mrs. Viola L. Henry.
The Prospective Juror: Fourteen.
The Clerk: Roswell S. Hickok.
The Prospective Juror: Ventura.
The Clerk: Gerald A. Hill.
The Prospective Juror: Ventura.
The Clerk: Robert E. Hill.
The Prospective Juror: Ventura.
The Clerk: Roger W. Hollis.
The Prospective Juror: Nine.
The Clerk: Nellie E. Holt.
The Prospective Juror: Ventura.
The Clerk: Iva L. Holzer.
The Prospective Juror: Twenty-five.
The Clerk: Richard E. Hood.
The Prospective Juror: Three. May I have a letter.
The Clerk: Archie L. Horrell.
The Prospective Juror: Fifteen.
The Clerk: Elmer Francis Hoscheit.
The Prospective Juror: Ventura.

The Clerk: Edward L. Houle.
[fol. 9] The Prospective Juror: Ventura.
The Clerk: James H. Hunt. James H. Hunt from Fillmore.

(No response.)

The Clerk: Rosalynn Lucille Hunt.
The Prospective Juror: Ojai.
The Clerk: Fourteen, 15 miles?
The Prospective Juror: Fourteen, I believe.
The Clerk: Dorothy Jackson.
The Prospective Juror: Ventura.
The Clerk: Harold Peyton Johnson.
The Prospective Juror: Fifteen.
The Clerk: Henry L. Johnson.
The Prospective Juror: Ten.
The Clerk: Donald D. Keller.
The Prospective Juror: Ventura.
The Clerk: Loretto E. Kennedy.
The Prospective Juror: Ten.
The Clerk: William A. King.
The Prospective Juror: Thirty-three.
The Clerk: Lucy V. Knutson.
The Prospective Juror: Twenty-five.
The Clerk: Irene Theresa Lafferty.
The Prospective Juror: Twenty-five.
The Clerk: Floria L. LaFrance.
The Prospective Juror: Nine.
The Clerk: Paul C. Lamp.
[fol. 10] The Prospective Juror: Ventura.
The Clerk: Sanford R. Landress, Jr.
The Prospective Juror: Twelve.
The Clerk: Ruth E. Linter.
The Prospective Juror: Eighteen.
The Clerk: I'm sorry. I didn't hear.
The Prospective Juror: Eighteen.
The Clerk: Eighteen.
The Prospective Juror: Yes.
The Clerk: Is that correct, 18 from Oxnard?
The Prospective Juror: Silver Strand Beach.
The Clerk: OK. Carolyn A. Mackey.
The Prospective Juror: Ten.

The Clerk: Ruby L. Menges.
The Prospective Juror: Ventura.
The Clerk: Bush Metcalf.
The Prospective Juror: Ten.
The Clerk: William J. Missimer.
The Prospective Juror: Ventura.
The Clerk: Horace D. Morgan.
The Prospective Juror: Ventura.
The Clerk: Edna E. Newhart.
The Prospective Juror: Sixteen.
The Clerk: Robert B. Noonan, Sr.
The Prospective Juror: Fifteen.
The Clerk: Helen F. Ollis.
[fol. 11] The Prospective Juror: Ventura.
The Clerk: Mary Lucille Osburn.
The Prospective Juror: Six.
The Clerk: Mrs. Willie C. Parr.
The Prospective Juror: Ten.
The Clerk: Susie J. Payton.
The Prospective Juror: Twenty-three.
The Clerk: Lovina Grace Piper.
The Prospective Juror: Ventura.
The Clerk: Richard W. Poole.
The Prospective Juror: Ventura.
The Clerk: Joseph T. Porter.
The Prospective Juror: Ventura.
The Clerk: Abner A. Potteet.
The Prospective Juror: Ten.
The Clerk: Joseph L. Raffetto.
The Prospective Juror: Eleven.
The Clerk: Donald M. Rhea.
The Prospective Juror: Ten miles.
The Clerk: Sorry?
The Prospective Juror: Ten.
The Clerk: I didn't hear you.
The Prospective Juror: Ten miles.
The Clerk: William Grady Richards, Jr.
The Prospective Juror: Ventura.
The Clerk: Norman J. Roach.
[fol. 12] The Prospective Juror: Twelve miles.
The Clerk: Artie A. Robinson, Artie A. Robinson of Ventura.
The Prospective Juror: Here.

The Clerk: Yes, sir. Dennis V. Robinson.
The Prospective Juror: Ventura.
The Clerk: Donald L. Ruggles.
The Prospective Juror: Twelve.
The Clerk: Susie F. Saavedra, S-a-a-v-e-d-r-a.
The Prospective Juror: Ten miles.
The Clerk: Trini B. Sawyers.
The Prospective Juror: Ventura.
The Clerk: Frank A. Schindler.
The Prospective Juror: Twelve.
The Clerk: Robert L. Sechrest.
The Prospective Juror: Fifteen.
The Clerk: Muriel J. Sherwin.
The Prospective Juror: Sixteen, and I will need a letter.
The Clerk: Jeanne Riha Sollen.
The Prospective Juror: Ten.
The Clerk: Henry D. Sondergp.
The Prospective Juror: Fifteen.
The Clerk: Floyd B. Spangler.
The Prospective Juror: Twenty-six.
The Clerk: Howard R. Stachey.
The Prospective Juror: Ten miles. A letter, please.
[fol. 13] The Clerk: Ernest J. Stefanko.
The Prospective Juror: Fifteen.
The Clerk: George Lee Stiles.
The Prospective Juror: Twenty-five.
The Clerk: William J. Stocker,
The Prospective Juror: Twenty-five.
The Clerk: Lucy S. Thiel.
The Prospective Juror: Fifteen.
The Clerk: Edgar Thomas.
The Prospective Juror: Fifteen.
The Clerk: Gladys M. Thompson.
The Prospective Juror: Ten.
The Clerk: Mrs. Clara J. Trom.
The Prospective Juror: Ventura.
The Clerk: Gary Eugene Tucker.
The Prospective Juror: Sixteen. I will need a letter.
The Clerk: Pearl Wayman.
The Prospective Juror: Ten.
The Clerk: Mrs. Margaret L. Wilms.
The Prospective Juror: Six.
The Clerk: Roger J. Wimer.

The Prospective Juror: Approximately 11.
The Clerk: George W. Wolff.
The Prospective Juror: Twelve.
The Clerk: James L. York.
The Prospective Juror: Three miles.
[fol. 14] The Clerk: Robert W. Young.
The Prospective Juror: Sixteen.
The Clerk: Clarence Youngs.
The Prospective Juror: Ten.
The Clerk: Robert H. Zuhlke.
The Prospective Juror: Ten.
The Clerk: Alfred F. Bartel.
The Prospective Juror: Twenty-two.
The Clerk: I will go over the list again. Carl J. Beasley.
The Prospective Juror: Fifteen.
The Clerk: Charles Borse, B-o-r-s-e, from Thousand Oaks. Leo J. Canelli.
The Prospective Juror: Oxnard. Ten miles.
The Clerk: Ten miles. Forest F. Fuger of Oxnard, F-u-g-e-r.
The Prospective Juror: Ten miles.
The Clerk: Ten miles. James H. Hunt of Fillmore.
The Prospective Juror: Twenty-five.
The Clerk: Twenty-five.
I believe that is it, your Honor. There is only one absent, Charles W. Borse.
The Court: What?
The Clerk: There is only one absent, Charles W. Borse, B-o-r-s-e.
The Court: One absent. If and when the absentee does—[fol. 15]) there is only one, apparently—if and when that absentee comes into the courtroom, will it be stipulated that his name may be put in the box?
Mr. Gustafson: So stipulated, your Honor.
Mr. Sullivan: So stipulated, your Honor.
The Court: So stipulated?
Mr. Sullivan: Yes, your Honor.
The Court: All right, thank you.
[fol. 16] The Court: Put the names in the box.
Mr. Sullivan: Your Honor, before we proceed with calling the jury in the box, may counsel approach the bench for just a moment?
The Court: Yes.

(The following proceedings were had at the Judge's bench, outside the hearing of the prospective jury panel:)

MOTION FOR CHANGE OF VENUE AND DENIAL THEREOF

Mr. Sullivan: Your Honor, I have filed a motion for removal. I served the District Attorney Friday and noticed it for hearing this morning and was going to suggest that I do not intend to argue that motion. It has been extensively argued before on behalf of Mr. Moya and Mr. Baldonado, and my motion is based upon the same grounds as the motion heretofore made by them.

I was merely going to suggest that perhaps if the Court would take the motion under submission at this time and defer ruling on it until after we have completed the voir dire examination, it would be satisfactory with me and I would be willing to stipulate.

The Court: What is wrong with a motion without prejudice to its renewal after the voir dire?

Mr. Sullivan: If Your Honor feels——

The Court: Is that satisfactory?

Mr. Sullivan: That is perfectly satisfactory.

The Court: It amounts to the same thing.

Mr. Sullivan: It amounts to the same thing.

[fol. 17] Mr. Gustafson: For the purpose of ruling on this, I wanted to state that I am submitting the matter on a basis of the counter affidavits which I filed with respect to the Moya and Baldonado applications for removal of the action, so that it stands before you on the basis of Mr. Sullivan's application, his affidavits, and the affidavits which he has incorporated by reference, and the affidavits which I have heretofore submitted in the other two cases. Am I correct?

Mr. Sullivan: That is correct and for the purpose of the record, Your Honor, I have been served with a copy of Mr. Gustafson's counter affidavits that you filed in the Moya case.

Mr. Gustafson: And with respect to the ruling, it appears to me that it would be more appropriate to deny the motion for application at the present time, without prejudice to renewing it.

The Court: That is what I just suggested, and Mr. Sullivan is not objecting to that?

Mr. Sullivan: No. I am not objecting, certainly.

The Court: All right. The motion for a change of venue is denied without prejudice to its renewal after voir dire.

Mr. Sullivan: Thank you, Your Honor.

Mr. Gustafson: Thank you.

(Pause.)

[fol. 18] STIPULATIONS AS TO JURORS EXCUSED

The Court: Will you attorneys approach the bench again.

We have a number of medical certificates, doctors' certificates under oath, to the effect that the prospective jurors are unable to serve on a jury. One, in particular, goes under surgery tomorrow and the question is: Are you people willing to stipulate that all the prospective jurors who have doctors' certificates, where the certificate is made under oath, may be excused?

Mr. Sullivan: So stipulated, Your Honor.

Mr. Gustafson: May I ask how many there are, Your Honor?

The Court: How many are there?

The Clerk: I don't know.

The Court: Quite a number. I don't know how many.

The Clerk: I don't think there are too many.

The Court: Not too many but several.

Mr. Gustafson: All right, I will stipulate.

The Clerk: You can find out from Mrs. Winn possibly. I don't think there are very many.

The Court: Find out if you can.

(Pause.)

The Clerk: She is down in the other courtroom, Your Honor.

The Court: What?

The Clerk: She is down in the other courtroom. Shall [fol. 19] I take time to go down there?

Mr. Gustafson: Well, I will stipulate, I will so stipulate that those that have written doctors' certificates made under oath may be excused.

Mr. Sullivan: So stipulated, Your Honor.

The Court: Thank you.

(The following proceedings were had in open court:)

The Court: Put the names in the box.

Mr. Gustafson: May it please the Court, I would request that the court make an order, if it hasn't already done so, for a daily transcript in this proceeding.

The Court: What?

Mr. Gustafson: For a daily transcript.

Mr. Sullivan: I join in that request, Your Honor.

The Court: All right. Your would like to have a daily transcript.

The Clerk: There are only two.

The Court: There are only two?

The Clerk: There are only two medical certificates.

The Court: Are they under oath?

The Clerk: I don't know. I can put them under oath.

The Court: Yes.

The Clerk: Will those that have written medical certificates step forward.

(Pause.)

The Clerk: This is Mr. Floyd Dungan, Your Honor.

[fol. 20] The Court: is that (indicating) under oath?

The Clerk: Under oath. Mr. Fergus Fairbanks——

The Court: The one who has a doctor's certificate under oath, Mr. Floyd Dungan, you are excused, Mr. Dungan.

Mr. Dungan: Thank you.

The Clerk: Mr. Floyd Dungan?

The Court: Yes, Mr. Dungan. He is excused. Well, will the attorneys approach the bench?

Mr. Sullivan: Yes, Your Honor.

(The following proceedings were had at the Judge's bench, outside the hearing of the prospective jury panel:)

The Court: Take a look at that certificate (indicating) and see if you want to stipulate. Are you willing to stipulate?

Mr. Sullivan: I'm willing to stipulate, Your Honor.

The Court: I think she ought to be excused.

Mr. Gustafson: All right, I will stipulate.

The Court: All right, Bill, tell her she is excused.

(The following proceedings were had in open court:)

The Clerk: Mrs. Mildred E. Halter has been excused.

The Court: File the certificate.

The Clerk: This (indicating) is the lady under surgery, Your Honor, tomorrow. It is not under oath.

(The following proceedings were had at the Judge's bench, outside the hearing of the prospective jury panel:)

The Court: This is the lady who is going under surgery [fol. 21] tomorrow morning. It is not under oath. Are you willing to stipulate?

Mr. Sullivan: So stipulated.

Mr. Gustafson: So stipulated.

The Court: All right, she is excused.

(The following proceedings were had in open court:)

The Court: She is Esther Garner—G-a-r-n-e-r.

The Clerk: This gentleman (indicating) has no certificate but he has a genuine excuse. Do you want to discuss it with him?

The Court: What does he say?

(The following proceedings were had at the Judge's bench, outside the hearing of the prospective jury panel and counsel:)

The Court: What is the excuse?

The Prospective Juror: I am in business with my father, and he has recently had a heart attack.

The Court: There is nothing the matter with you?

The Prospective Juror: No.

The Court: Well, the attorneys will never excuse you. Later on you may be excused.

The Prospective Juror: The question was that, Your Honor, and also one of my drivers is going to be in the hospital.

The Court: That is not a legal excuse.

The Prospective Juror: I didn't know what the situation [fol. 22] would be.

The Court: Well, then we would have to excuse half the jury panel.

The Prospective Juror: I wanted to know what the situation was.

The Court: There isn't one chance in a hundred that you would get on the jury anyway.

(The following proceedings were had in open court:)

The Court: All right, put the names in the box.

While these names will be put in the box, will the attorneys come forward.

Go right ahead.

(The following proceedings were had at the Judge's bench, outside the hearing of the prospective jury panel:)

The Court: Will it be all right if we swear this whole jury panel at once?

Mr. Sullivan: Certainly, Your Honor.

Mr. Gustafson: Yes.

(The following proceedings were had in open court:)

The Clerk: As I call your name, please step forward and the Bailiff will seat you in the jury box.

James L. York—Y-o-r-k.

Clyde H. Campbell. C-a-m-p-b-e-l-l.

Ivey—that is I-v-e-y L. Holzer. H-o-l-z-e-r.

Norman Eugene Batten—B-a-t-t-e-n.

Floyd B. Spangler—S-p-a-n-g-l-e-r.

[fol. 23] Richard E. Hood—H-o-o-d.

William A. King—K-i-n-g.

Bush Metcalf—M-e-t-c-a-l-f.

Joseph T. Porter—P-o-r-t-e-r.

Muriel J. Sherwin—S-h-e-r-w-i-n.

Mary Lucille Osburn—O-s-b-u-r-n.

Mrs. Bernice M. Arend—A-r-e-n-d.

Swearing in of Prospective Jurors

Will you all stand and raise your right hand and be sworn, please.

The Court: You might as well swear the whole crowd.

The Clerk: Will all the prospective jurors stand and raise their right hand and be sworn.

(The entire prospective jury panel was sworn.)

The Clerk: You may all be seated, please.

Court's Statement to Prospective Jurors

The Court: Now, what I'm about to say applies to the entire jury panel, not only the 12 men and women in the box.

In this case which is on trial here today—it is titled The People of the State of California against Elizabeth Ann Duncan—the plaintiff is the State of California, represented by District Attorney Roy Gustafson. The defendant is Elizabeth Ann Duncan, represented by Mr. Ward Sullivan.

The indictment which the grand jury of this county returned against the defendant, charges her with the murder of Olga Duncan.

[fol. 24] What we are now about to do is to select a jury to try this case.

It is extremely important that every person who is called to the jury box pay close attention to the questions asked and give complete and honest answers to the questions. Remember you are under oath in answering the questions.

The law of this state requires that this case be tried by qualified jurors. I ask you to understand that the questions which will be propounded to you by me and the attorneys are not for the purpose of embarrassing you or unnecessarily prying into your personal affairs or beliefs but are only for the purpose of ascertaining whether you are qualified—whether you are disqualified for any reason to serve as a juror in this case.

A person is disqualified as a juror if any one of a number of conditions exist. Without attempting a complete list, a person is disqualified as a juror if he is not a citizen, if he is not at least 21 years old, if he has not resided in Ventura County for at least the last year, if he cannot see or hear well, if he does not possess sufficient knowledge of the English language, or if he has been convicted of a felony. It is also a disqualification in a case of this kind if a person entertains such conscientious opinions concerning the death penalty as would preclude his finding the defendant guilty of first degree murder or applying the death [fol. 25] penalty to the defendant if she is found guilty of first degree murder.

In order to qualify as a juror, a person must be able and willing to follow the instructions I give on the law, whether he agrees with them or not. He must also be able and willing to decide the case solely on the basis of the evidence presented here in court.

If he cannot do so, he should make this known so that he can be excused.

Some of you may have read about this case or heard it discussed by others. You may even have formed or expressed an opinion about the guilt or innocence *or* the defendant from what you read or heard. However, our law provides that no such person is disqualified for that reason, if it appears to me from his answers that he can and will, notwithstanding such an opinion, act impartially and fairly upon the matter to be submitted to him.

You are not expected to know what principles of law are applicable to this case and I do not intend to permit the attorneys to question you about your knowledge of law. Neither do I intend to permit the attorneys in their questioning to instruct you on what the law is. At appropriate times after the jury is selected and during the case, I will instruct you what the law is.

For the time being it is sufficient for you to be told that this is a criminal and not a civil case. The defendant is [fol. 26] presumed to be innocent until the contrary is proved. The burden of proving the defendant guilty rests upon the plaintiff, the People of the State of California. In case the defendant's guilt is not proved to your satisfaction beyond a reasonable doubt, the defendant is entitled to an acquittal.

After any prospective jurors are excused because of disqualification, other prospective jurors may be excused by each side without stating any reasons therefor. This is called the exercise of a peremptory challenge. The exercise of a peremptory challenge by one of the attorneys is a legal right and the remaining prospective jurors should not permit it to influence them in any manner and they should not speculate on why the challenge was exercised.

This trial is estimated to last four weeks.

I am bound by the following law: A juror shall not be excused by a Court for slight or trivial causes or for hardship or for inconvenience to said juror's business, but only when material injury or destruction to said juror's property or the property *in*trusted to said juror is threatened or when said *said* juror's health, or when the health or proper care of said juror's own family, or when the sickness or death of a member of said juror's family makes it necessary for said juror to be excused. At least keep this law in mind and do not ask to be excused unless you are entitled under the law to be excused.

[fol. 27] The jury will be the sole and exclusive judges of the weight, value and effect of the testimony and of the credibility of the witnesses. Any verdict that is arrived at [fol. 28] must be predicated or based on the evidence adduced here in court, not on anything that you may have heard on the outside, may have heard or read on the outside.

You may inquire.

Mr. Sullivan: Thank you, your Honor.

Voir Dire examination.

Mr. Sullivan:

Q. Mr. York, may I inquire as to your business or occupation?

The Prospective Juror: A Dry cleaning plant, shop owner and operator.

Q. Is that in Ventura?

A. Yes, sir.

Q. Have you had any previous experience as a trial juror in criminal cases?

A. I believe one time. It was a Coroner's Jury.

Q. I see. You heard the Court inform you that my client, Elizabeth Duncan, is charged by this indictment returned by the Grand Jury with the offense of murder; you understand that?

A. Yes, sir.

Q. Do you not?

A. I do.

Q. Is there anything about the nature of that charge that would cause you to entertain any bias or prejudice of any [fol. 29] kind or nature against Mrs. Duncan?

A. Not before I heard the evidence, no, sir.

Q. Have you ever been connected with any law enforcement agency?

A. No, sir.

Q. Is anyone of your family or anyone near and dear to you connected in any manner with any law enforcement agency?

A. No, sir.

Q. Are you personally acquainted with Mr. Gustafson or any of the members of his office?

A. I believe not, sir, no, sir.

Q. Do you recall, Mr. York, whether or not in the past you have read or heard anything about this case?

A. Oh, yes, I did.

Q. I take it that you read the newspapers, do you not?

A. I do, yes.

Q. Do you subscribe to any of the local newspapers?

A. I do.

Q. What papers do you subscribe to?

A. Ventura-Free Press.

Q. I see. And in addition to that I take it that you from time to time hear radio news broadcasts; is that not correct?

A. No, no radio.

Q. I see. Do you observe television news broadcasts [fol. 30] from time to time?

A. I do, yes.

Q. And have you read anything about this case in any other newspaper other than the Ventura-Free Press?

A. Yes.

Q. What other papers have you?

A. Los Angeles Times.

Q. Los Angeles Times. Now, have you heard and observed any television broadcasts, news broadcasts concerning this case?

A. I believe not, sir.

Q. Do you recall whether or not you have ever discussed this case with any person?

A. I don't think so.

Q. Well, is there any doubt in your mind about it, Mr. York?

A. No, I don't believe there is.

Q. Has anybody talked to you about the case?

A. Absolutely.

Q. They have?

A. Yes.

Q. You have heard this case discussed then by some persons who have mentioned it to you; is that correct?

A. Yes, sir.

Q. Have you talked to many people about it?

A. No, no, not many.

[fol. 31] Q. Could you tell me approximately how many people you have talked of this case?

A. Oh, approximately four, I would say, have talked to me.

Q. I see. Did you, yourself, participate in that discussion?

A. I'm afraid not, no, sir.

Q. Did these people who talked to you about the accident purport to have some knowledge concerning this case?

A. Well, none other than what they read about it, no, sir.

Q. Well, did they say that that is all they knew about it, was what they had read about it?

A. Well, they probably would be like myself. That's all they would know about it.

Q. Well, are you merely assuming—

A. Absolutely.

Q. —that's all they knew about it was what they read?

A. Sure. That's all I knew about it.

Q. But I mean when you say that these people who discussed this case with you, that all they knew about it was what they read in the newspapers, I take it that you are merely assuming that their knowledge came from what they read in the newspapers; is that correct?

A. Well, that's the only thing you could assume.

[fol. 32] Q. Well, then you are assuming that; is that not right?

A. Assuming that.

Q. And were these people friends of yours?

A. Business acquaintances up and down the street.

Q. You don't know whether or not any of these people who did discuss the case with you had any personal knowledge of the facts or circumstances surrounding this case, do you?

A. If they did, they didn't say so.

Q. But I say you don't know whether they did or not.

A. No, I wouldn't say for sure whether they did or not.

Q. Well, now, as a result of what you have read about this case, or what people have talked to you about it, have you formed or expressed any opinion regarding the guilt or innocence of Mrs. Duncan?

A. I suppose as much as the ordinary man would have, yes.

Q. Well, when you say you suppose as much as the ordinary man would have, I take it that you are supposing

that everybody who read about this case has formed in their own mind some opinion regarding the guilt or innocence of Mrs. Duncan; is that correct?

A. More or less, I would say, yes.

Q. And would it be fair then to say that as a result of what you read or heard talked about this case that you, [fol. 33] yourself, have formed some opinion regarding either the guilt or innocence of Mrs. Duncan; is that correct?

A. Wouldn't any man that read it form an opinion?

Q. Well, I am asking you if you, yourself, have, Mr. York.

A. Well, I couldn't say that any man had formed an opinion of it until he heard the evidence. We couldn't form an opinion of the thing until we heard the evidence.

Q. Well, did you, yourself, form any opinion regarding either the guilt or innocence of Mrs. Duncan as a result of what you read or what someone talked to you about?

A. You are asking me a question and I can't answer that. Let's just put it that way.

Q. Well, don't you understand the question?

A. Yes, I understand it, but I am trying to be truthful. I told you I have formed as much of an opinion as anybody else who read the story.

Q. Well, I want to know if you, yourself, Mr. York, have formed any opinion regarding the guilt or innocence of Mrs. Duncan?

A. Well, regardless of what kind of an opinion you have formed, you don't come to the conclusion of your opinion until you have heard the evidence.

Q. Well, that doesn't quite answer my question. What I want to know is whether you personally have formed any opinion.

[fol. 34] A. Not a conclusive opinion, no.

Q. Not what?

A. Not a conclusive opinion.

Q. Well, you have formed some opinion, is that correct?

A. I suppose so, yes.

Q. And the opinion which you did form, was that an opinion that was adverse to Mrs. Duncan?

A. Well, I would say that would be my personal opinion, sir.

Q. That is your personal opinion?

A. That is my personal opinion.

Q. And as a result of that opinion would it take some evidence to overcome it?

A. Yes, both ways, both sides.

Q. In other words, as far as the defense in this case is concerned, it would put a burden on our shoulders to overcome the opinion which you, yourself, have formed in the past?

A. I didn't say that, sir.

Q. I'm sorry.

A. I didn't say that.

Q. Well, I am asking you: Would it?

A. Well, I don't think so.

Q. Well, is there any doubt in your mind about it?

A. I don't think so, no, sir.

[fol. 35] Q. Well, you say you don't think so. Do you know?

A. At the present time I do know, yes.

Q. All right. What would be your answer then as to your present frame of mind?

A. Well, I would say I would be perfectly neutral right at the present time.

Mr. Sullivan: I'm sorry. Would you read the answer back, Mr. Reporter?

(Record read.)

Mr. Sullivan:

Q. And you feel as you sit in the jury box here this morning that you have absolutely no opinion one way or the other regarding the guilt or innocence of Mrs. Duncan; is that right?

A. That's right.

Mr. Gustafson: I object to that, your Honor. It is unfair. The prospective juror did not say that he didn't have any opinion. He said he did have one.

The Court: Well, he is asking him now if he has any opinion. The objection, if it is an objection, is overruled.

Mr. Sullivan: Do you want the Reporter to read the question back to you, Mr. York?

The Prospective Juror: Please.

(Record read.)

Mr. Sullivan:

Q. Let's say that you, yourself, were on trial in this courtroom today charged with the identical offense that is charged against Mrs. Duncan in this indictment, and that [fol. 36] all you wanted was a jury composed of men and women who would be absolutely unbiased and unprejudiced. Do you feel that you could get a trial at the hands of that kind of a jury if they were composed of men and women of your present frame of mind?

A. Well, you could try.

(Laughter.)

The Court: Quiet.

Mr. Sullivan: Well, that hardly answers my question.

The Court: Mr. Sullivan, just a minute. Ladies and gentlemen, please be quiet. We don't want to have any demonstration of any kind here.

Mr. Sullivan: Mr. Reporter, I wonder if you would read that last question back to Mr. York.

If you don't understand it, tell me, and I will reframe it.

(Last question read.)

The Prospective Juror: I would say yes.

Mr. Sullivan:

Q. I noticed, Mr. York, that you took some moments to answer that question. Was there some hesitancy on your part in answering "Yes"?

A. I don't believe there was.

Q. Do you know whether there was or not?

A. Well, you could hope for a fair trial under those conditions.

Q. I'm sorry.

A. I say you could try to get a fair trial or pick a non- [fol. 37] partisan jury.

Q. Well, would I?

A. Well, I don't know. I'm not standing where you are.

Q. I know, but you see I am trying to find out what your frame of mind is, Mr. York. I can't read your mind. I can't read what is going on in your mind. All I can do is ask you a few questions to see if I can have you tell me what your frame of mind is. You see?

A. Could I make a statement to you?

Q. Yes.

A. My frame of mind would depend on the evidence I heard in this case, not now.

Q. Not what?

A. Not as of now. After I heard the evidence in this case, it would then depend on my idea about it.

Q. In other words, what you are trying to tell me, I gather, is that you would decide this case—

A. After I heard the evidence, yes, sir, not before.

Q. Let me finish the question. I don't mind you interrupting because I realize you thought I had finished my question.

I understand what you are trying to tell me then is that you would decide this case; that is, the question of the guilt or innocence of Mrs. Duncan solely and exclusively from the evidence as it comes to you from the witness stand in [fol. 38] this courtroom?

A. That's right, sir.

Q. All right.

A. That's right, sir.

Q. And do you feel that if you are accepted as a juror in this case, that you could completely disassociate from your mind anything that you might have read about this case in the past or anything that any person might have said to you about it?

A. I do, yes, sir.

Q. You would have no difficulty whatsoever in doing that?

A. Not one bit.

Q. Now, in the trial of a criminal case such as we have on the calendar here today, the prosecution; that is, the District Attorney has to present all of his evidence first; you understand that, do you?

A. Yes.

Mr. Gustafson: I'm going to object to that, your Honor. It now calls for the knowledge of this prospective juror as to the rules of law, and as I understood your Honor, you said that the jury was not to be questioned about their understanding of the rules of law and procedure.

The Court: That is right. The objection is sustained.

Mr. Sullivan:

Q. You feel that if you are accepted as a juror in this case, that you could keep your mind open with respect to [fol. 39] the guilt or innocence of Mrs. Duncan until you have heard all of the evidence; that is, not only the evidence offered on behalf of the prosecution, but the evidence offered on behalf of the defense as well?

A. I do.

Q. Is that correct?

A. Yes.

Q. Now, it may be that certain law enforcement officers may take the witness stand and testify in this case. Are you apt to give any greater credence to their testimony merely because they happen to be law enforcement officers?

Mr. Gustafson: I will object to that question, your Honor, as being entirely improper because the juror might well give more credence to the testimony of a person merely because he is a law enforcement officer. It is improper.

The Court: That is merely because he is a law enforcement officer?

Mr. Gustafson: Yes. By reason of the occupation of a person it may make a great deal of difference. All the juror is required to do is to apply the same rules in judging the credibility of a law enforcement officer as he applied in judging the credibility of any other witness.

The Court: Well, but that word "merely" is in there. The objection is overruled.

Mr. Gustafson: Your Honor, may I approach the bench?

The Court: Yes, with the other attorney.

[fol. 40] (The following proceedings were held at the bench between Court and respective counsel.)

Mr. Gustafson: It seems to me that this is quite similar to a question asked of a prospective juror whether he could give the same credit to the testimony of the defendant, his interest in the result being taken into consideration, that he could give to any other witness.

The Court: He asked him if he would give more credence to the testimony of an officer merely because he was an officer.

Mr. Gustafson: That is correct, and it is perfectly proper for a juror to do that. A juror may give less credence to the testimony of the defendant, for example, merely because he is a defendant and because he has an interest in the case. A juror may give more credence to the testimony of a particular person because of that person's occupation, and a juror may give more credence to the testimony of a particular person because of that person's occupation. For example, if a doctor were being examined with respect to the question of sobriety—

The Court: I know. When it comes down the question of a police officer merely because he is an officer—

Mr. Gustafson: I am going to rely on the case of People versus Fowler, 178 Cal., 657.

The Court: Let me see it.

Mr. Gustafson: The thing that I think is a proper thing is "Will you judge the testimony of the officer under the same rules as are applied to every other witness?" That, [fol. 41] I have no objection to.

Mr. Sullivan: I think the question was proper.

(Pause.)

The Court: (examining document.) I don't think that has any application.

Mr. Gustafson: I think by analogy, your Honor. The thing is that if a juror——

The Court: Give more credit to it merely because—the objection is overruled.

(The following proceedings were had in the presence of the jury:)

(Last question read.)

The Prospective Juror: A. I don't know, sir.

Mr. Sullivan:

Q. And in the event that my client, Elizabeth Duncan, should take the witness stand and testify as a witness in her own behalf, would you be apt to deny her the benefit of her own testimony merely because she happens to be accused of this offense?

Mr. Gustafson: I object, your Honor. That is clearly incompetent and improper. One of the factors that the jury may take into consideration is the interest of the witness in the case, and it is a wholly improper question.

Mr. Sullivan: Well, I have a right—

Mr. Gustafson: And I object.

Mr. Sullivan: I am sorry, Mr. Gustafson. I have a right to know whether or not a juror is going to deny a defendant [fol. 42] the benefit of their own testimony merely because they happen to be accused of the offense. If they are of that frame of mind, they would be disqualified, your Honor.

Mr. Gustafson: Your Honor, I am going to rely again on the case I cited to your Honor and another one of similar import.

I have no objection to counsel asking these prospective jurors whether they will be guided by the rules laid down by the Court in judging any witness's testimony, including the testimony of the defendant, should she testify, but I certainly object to having counsel ask prospective jurors in advance what weight they are going to give to a particular person's testimony.

Mr. Sullivan: I am not asking for the weight, your Honor.

The Court: I didn't ask him to understand what weight. Mr. Reporter, read that question.

Mr. Gustafson: Well, by the—

The Court: Wait a minute, wait a minute. Mr. Reporter, read that question, will you please?

(Last question read.)

The Court: The objection is overruled.

Mr. Sullivan:

Q. Would you answer the question, Mr. York?

A. No, I wouldn't deny her her testimony.

Q. All right. Mr. York, have you or has anyone near and dear to you ever been the victim of any crime of vio- [fol. 43] lence?

A. No, sir.

Q. Or have you ever had occasion or anyone near and dear to you, insofar as you know, ever had occasion to

testify against any person charged with some crime of violence?

A. Not that I know of.

Q. I am going to read you some names here and I want to ask you if you recognize any of these names that I call out to you, and these are names of some prospective witnesses. I don't know all of the witnesses that will be called in this case, but I want to direct your attention to these particular names: Clarence R. Henderson, D. Gordon Johnston, Virgil L. Payton, Doreen Corraini, Sylvia Butler, Hal V. Hammons, J[illegible] Emma Short, Barbara Reed, Diane Romero, Rudolph Molino Romero, Mary Ann Dowhower, D-o-w-h-o-w-e-r, Dorothy Barnett. Do you recognize any of those names?

A. Two of them.

Q. What names?

A. Virgil Payton, County Coroner and I know Hal Hammons as an attorney.

Q. You know Mr. Hammons as an attorney?

A. As an attorney.

Q. And the other one was Virgil Payton.

A. Payton, the Coroner, yes, sir.

Q. Well, you are personally acquainted with Mr. Payton?

[fol. 44] A. No, sir.

Q. I see. You just recognize the name?

A. The name on account of him being a public officer is all. I don't know if I would know him if I would see him.

Q. You wouldn't know him if you saw him?

A. No, sir.

Q. How about Mr. Hammons?

A. I do know him on sight.

Q. You know him on sight?

A. Right.

Q. Does he happen to be a customer of your dry cleaning establishment?

A. No, he does not.

Q. He is not a friend of yours then, I take it?

A. No, sir, not a personal friend.

Q. Do you have a speaking acquaintance with him?

A. If I met him on the street, yes, sir.

Q. Have you ever had any discussions with him?

A. No, sir.

Q. Talked with him?
A. No, sir.
Q. Never at any time?
A. No, sir.
Q. Well, because of your speaking acquaintance with Mr. Hal Hammons, by reason of that fact alone, would you be apt to give any greater credence to his testimony?
[fol. 45] A. No, sir.
Q. You feel that you could weigh and consider his testimony by the same standards as you would that of any other witness?
A. Yes, sir.
Q. Is that correct? Mr. York, as the Court told you, my name is Ward Sullivan and I am the attorney representing Mrs. Duncan. I don't practice law in Ventura County. I am from Los Angeles County and my practice is primarily in that County, and so I might say to some extent I am a stranger in your community.
Would the fact that Mrs. Duncan has availed herself of my services and not the services of a local attorney in Ventura County cause you to entertain any bias or prejudice against her whatsoever?
A. No, sir.
Q. Do you feel that you can give us just as fair a break as if she were represented by local counsel; is that correct?
A. That's correct, sir.
[fol. 46] Q. Now, as you sit in this witness stand today—I mean in the jury box today—is there any reason in your mind that would cause you to feel that you could not give to Mrs. Duncan a fair and impartial trial?
A. No, sir.

Mr. Sullivan: Thank you, Mr. York.

Mr. Sullivan:

Q. Mr. Campbell.
A. Yes, sir.
Q. May I inquire as to your business or occupation, Mr. Campbell?
A. General contractor.
Q. General contractor?
A. Yes, sir.

Q. And are you engaged in the general contracting business in Ventura County?

A. Yes.

Q. And have you been in that business for some years?

A. Yes.

Q. Have you ever been, or has anyone near and dear to you, ever been connected in any manner whatsoever with any law enforcement agency?

A. Yes.

Q. Have you yourself?

A. No.

Q. Some relative of yours?

A. Yes.

[fol. 47] Q. Is that a close relative?

A. Niece's husband.

Q. Your niece's husband?

A. Yes, sir.

Q. And is he presently engaged in some law enforcement activities?

A. No.

Q. But I take it that he was in the past; is that correct?

A. Right.

Q. Was that in Ventura County?

A. No.

Q. In some other county?

A. C.H.P.

Q. California Highway Patrol?

A. Yes.

Q. And was that some time ago?

A. I guess he has been retired about 10 years, if I recall correctly.

Q. Was he connected with the California Highway Patrol for some years?

A. That I don't know. He was with it for six years prior to marrying my niece. I don't know about his previous.

Q. Well, let me ask you this: The fact that your niece's husband was at one time connected with the California Highway Patrol, would that fact in and of itself cause you to give any greater credence to the testimony of a law [fol. 48] enforcement officer?

A. No.

Q. And in the event that some law enforcement officer should become a witness in this case, would you be apt to give any greater credence to the testimony of such a witness, merely because he happens to be a law enforcement officer?

A. No.

Q. In the event that Elizabeth Duncan should take the witness stand and testify as a witness in her own behalf, would you deny to her the benefit of her own testimony, merely because she happens to be the defendant in this case?

A. No.

Mr. Gustafson: I am going to object to that question, your Honor, on the same grounds as before and on the further ground that it is unintelligible. I don't understand what is meant by "to deny to her the benefit of her testimony."

The Court: Read that question. I want to get it exact.

(Whereupon the question was read as follows:

"Q. In the event that Elizabeth Duncan should take the witness stand and testify as a witness in her own behalf, would you deny to her the benefit of her own testimony, merely because she happens to be the defendant in this case?")

The Court: The objection is overruled.

Mr. Sullivan: The prospective juror had already answered, your Honor, and he answered "No."

[fol. 49] The Court: All right.

The Prospective Juror: You might be interested, in law enforcement, my wife happens to belong to a local auxiliary unit, if that is in point.

Mr. Sullivan:

Q. Your wife happens to belong to a local auxiliary unit?

A. Yes.

Q. That is here in Ventura County?

A. Yes.

Q. May I inquire as to what unit that is?

A. Sheriff's Auxiliary.

Q. And does your wife take some active part in that unit, Mr. Campbell?

A. She has in the past.

Q. Is she still connected with it?

A. Yes, she is still connected with it.

Q. And I take it that in connection with her work in that auxiliary unit, that she comes in contact with members of the Sheriff's office?

A. That is right.

Q. And is personally acquainted, I take it, with a great many of the gentlemen who are connected with the Ventura County Sheriff's office, is that correct?

A. A small acquaintance.

Q. Are you yourself personally acquainted with any of the members of the Sheriff's office, and I am excluding your [fol. 50] wife in the question?

A. Well, I would say "No."

Q. You would say "No." Would you say you had a passing acquaintance with some?

A. Well, I recognize a few of them and I had a few at school, and I was teaching school at the County Sheriff's.

Q. You at one time taught school, is that correct?

A. Yes.

Q. And some of the gentlemen who are now Deputy Sheriff's or connected in some capacity with the Ventura County Sheriff's office, were at one time pupils of yours, when you were a teacher, is that correct?

A. That is correct.

Q. Would that fact, in and of itself, cause you to give any greater credence to the testimony of a law enforcement officer, if he happened to turn out to be a Deputy Sheriff?

A. Well, that is kind of a difficult thing to answer, Mr. Sullivan. It is the weight you put on some of the words, the personal interpretation of some of the words. I don't know how you can answer that question intelligently.

Mr. Gustafson: I don't either, your Honor, and I still object to it.

Mr. Sullivan:

Q. You don't understand the question? Is that it?

A. Well, I think I know what you are fishing for, but I don't know how much weight to put to some of your words.

[fol. 51] Q. Well, what I'm trying to find out, in a nutshell, is this, Mr. Campbell: That some of your former pupils are now members of the Ventura County Sheriff's office?

A. Right.

Q. And I believe that the prosecution in this case will call as witnesses certain gentlemen who are Deputy Sheriffs of Ventura County.

A. That is right.

Q. Now, if they do call such a witness, would you be apt to give any greater credence to the testimony of that witness merely because at sometime in the past you taught certain pupils in school who are now Deputy Sheriffs?

A. Well, you haven't changed the wording of the question at all. After all, if a person of that caliber is in there, you will weigh it according to your judgment as to the integrity of the person.

Q. That is right. But would you give any greater credence to his testimony merely because you taught him?

A. Greater credence than what? Than whom?

Q. Greater than that of any other witness.

Mr. Gustafson: I am going to object, your Honor. There we go again. He is asking if he will give greater credence to the testimony of the Deputy Sheriff than any other witness. How is the juror going to judge what weight he is going to give to the testimony of two hypothetical witnesses, whom he has never heard?

[fol 52] The Court: Yes, but the important part of that question is "merely because he is an officer."

Mr. Gustafson: The juror may take into consideration the occupation of the witness as one of the factors in determining the weight to give to his testimony.

The Court: He may take that into consideration but he will not give greater or less credence to a witness merely because he happens to be an officer. The objection is overruled.

The Prospective Juror: I guess the answer would be "No", after this discussion.

Mr. Sullivan:

Q. The answer is "No," is that right?

A. Yes, after listening to these two (indicating). I still don't like the question. It is a hard one to do anything with.

Q. Incidentally——

A. What they say has a lot to do with how much credence you are going to give it.

Q. Incidentally, Mr. Campbell, if I should ask you any questions that you don't understand, why please let me know and I will try to reframe it, because I don't want you to attempt to answer a question unless you understand the question itself. Now, you understand that Mrs. Duncan is charged in this indictment with the offense of murder, do you not?

A. That is what the judge said.

Q. And would the fact that she is charged with that offense, that fact in and of itself, cause you to entertain [fol. 53] any bias or prejudice against her?

A. Well, I couldn't form an opinon without evidence.

Q. No. Maybe you didn't understand my question. The mere fact that she is charged with this offense, would not in and of itself cause you to entertain any bias or prejudice against her?

A. No, not in and of itself.

Q. That is what I mean. In other words, the mere fact that the charge is murder instead of, say, let's say, theft, wouldn't cause you to entertain any bias or prejudice against her; is that it?

A. No.

Q. You feel that if you are accepted as a juror in this case, that you could keep your mind open regarding the guilt or innocence of Mrs. Duncan until you have heard all of the evidence; that is, not only the evidence offered on behalf of the prosecution but evidence offered on behalf of the defendant as well?

A. I think so. I believe so.

Q. Well, you say you think so. Is there any doubt in your mind?

A. Well, I guess not.

Q. You say you guess not?

A. I guess there is no doubt.

Q. Well, you say that you guess. Do you know?

The Court: Well, he changed that afterwards and said [fol. 54] definitely that there was no doubt.

Mr. Sullivan: Oh, he said there was no doubt. All right, I didn't understand the statement.

Q. Mr. Campbell—withdraw that for a moment—do you subscribe to any of the local papers?

A. Yes.

Q. To what papers do you subscribe?

A. The Star-Free Press.

Q. And I take it that maybe from time to time you advertise in that newspaper; do you?

A. No, I don't.

Q. You get along without it?

A. (Witness nods head affirmatively.)

Q. Do you from time to time listen to news broadcasts over the local radio station?

A. No.

Q. Or any other radio station?

A. (Witness shakes head negatively.) Very seldom.

Q. Do you ever watch the television news broadcast?

A. (Witness shakes head negatively.)

Q. Never at all?

A. Very seldom.

Q. You say very seldom. Do you sometime?

A. Probably once in the last six weeks.

Q. Have you read anything about this case in the papers? [fol. 55] A. Oh, partly, what has been published.

Q. You say partly. You have read about the case in the Ventura-Free Press, is that right?

A. That is right.

Q. And have you read about it in any other newspaper?

A. Yes.

Q. What other newspapers have you read about it in?

A. The Times and the Santa Barbara paper.

Q. And have you observed or heard any television broadcast, news broadcast concerning this case?

A. No.

Q. Never at any time?

A. No.

Q. You indicated to me that you haven't heard any radio broadcast, but do you recall whether you heard any broad-

casts of any kind, whether radio or television, concerning this case or any persons connected with it?

A. None at all.

Q. Have you discussed this case with anyone?

A. With the immediate family.

Q. How about your customers dropping into your shop there? Have they talked about it?

A. No. I haven't discussed this case. I haven't read enough about it to intelligently discuss it.

Q. Well, I am merely asking if your customers, dropping into the shop there, might have discussed it with you? [fol. 56] A. They have mentioned it, yes.

Q. Have you discussed it with any other person?

A. No, not that I recall.

Q. Can you tell me approximately how many people you have discussed this case with?

A. I wouldn't say over half a dozen.

Q. These people that you discussed it with, do you know whether they had any personal knowledge concerning any of the facts or circumstances surrounding this case?

A. Not that I know of.

Q. You don't know whether they did or not?

A. Not to my knowledge.

Q. You don't know, then?

A. No. They didn't say.

Q. All right. Well, as a result of what you read about this case or what you discussed with other persons or heard discussed about it, did it cause you to form any opinion in your own mind respecting the guilt or innocence of Mrs. Duncan?

A. To some extent.

Q. And was that opinion one that was unfavorable to Mrs. Duncan?

A. I would say yes.

Q. And do you have that opinion as you sit in the jury box today?

A. I would assume so. I haven't done anything else [fol. 57] about it since I formed it.

Q. There is nothing that has occurred since you formed that opinion, that has caused you to change your opinion in any respect?

A. I haven't read anything on it since. I didn't notice anything about it lately in the paper.

Q. So you still entertain that opinion as you sit in the jury box, is that correct?

A. Yes.

Q. And I think that you indicated that that was an opinion adverse to my client, Mrs. Duncan, is that correct?

(Witness nods head affirmatively.)

Q. Would it take some evidence on our part to overcome the opinion that you now have?

A. Well, it would have to.

Q. You say you think it would have to?

A. Yes.

Q. In other words, we would be starting out with a bit of a handicap, is that it?

A. Well, yes, but not too strong.

Q. Somewhat?

A. Somewhat.

Mr. Sullivan: I am going to challenge this juror for cause, your Honor.

Mr. Gustafson: Your Honor, I desire to examine the juror. I don't think that the challenge for cause lies at this point, because the only pertinent question was not asked of [fol. 58] this juror. May I proceed?

The Court: Yes.

Mr. Gustafson: Mr. Campbell, notwithstanding the opinion that you have with respect to Mrs. Duncan, the one that is adverse to her, will you act impartially and fairly upon the matters submitted to you, if you sat as a juror?

The Prospective Juror: Yes.

Mr. Gustafson: And if the judge then should tell you that one of the rules of law is that the defendant does not have to prove anything but the entire burden of proof is upon the plaintiff, the People of the State of California, represented by me, you would follow that instruction, would you not?

The Prospective Juror: Why, yes.

Mr. Gustafson: I submit that the juror is not disqualified, because he has stated that he can, notwithstanding his present opinion based upon newspaper articles and discussing it with others, that he can and he will act impartially and fairly upon the matter to be submitted to him.

The Court: If you should be accepted as a juror in this case, would you be entirely fair and impartial, and predicate your verdict absolutely and solely upon the evidence that you shall hear in court and not to any extent at all upon any opinion that you now have?

The Prospective Juror: Yes.

The Court: The challenge is disallowed.

[fol. 59] Mr. Sullivan:

Q. You would have no trouble at all in doing that?

A. I don't think so. I don't know. It is a matter of human nature.

Q. You say that you don't think so, that you don't know. There is a kind of hesitancy on your part, is that right?

Mr. Gustafson: I am going to object, your Honor, to that question, because it is immaterial whether the juror would have trouble doing that. The juror might well have trouble doing that. The question is whether he will.

The Court: Objection sustained.

Mr. Sullivan:

Q. Do you think that you can completely disassociate from your mind what you read or heard about this case in the past?

Mr. Gustafson: I object to that, your Honor. The law doesn't require that a witness disassociate from his mind anything that he has read. It requires that, notwithstanding his opinion, he will——

The Court: I know. The objection to that particular question is sustained.

Mr. Sullivan:

Q. Well, do you feel that you could completely disassociate from your mind what you might have read or heard about this case in arriving at a verdict in this case?

A. I would think so. It would depend upon what went on in between.

Q. You don't know whether you could or not do that?

[fol. 60] A. No, I don't believe that I could state the absolute fact right now.

Q. You feel that the opinion which you have formed about this case, from what you have read or heard about it, would tend to influence your verdict, is that it?

A. It is pretty hard to shake from your mind someone's opinion or some information that you have already preformed.

Q. I agree with you, Mr. Campbell. You are absolutely right about it. I want to know——

A. I'm trying to give you an honest answer.

Q. What?

A. I'm trying to give you an honest answer.

Q. I am trying to find out if you can set it aside or if it is going to influence your verdict one way or the other.

A. I have answered that one.

Q. What?

A. I have answered that one.

The Court: What is your answer? Would it influence your verdict or would it not?

The Prospective Juror: Well, I would think it would have to have a tendency to.

The Court: Just a minute. You told me that you would predicate your verdict entirely upon the evidence here in court.

The Prospective Juror: Well, I would.

The Court: Is that correct?

[fo. 1] The Prospective Juror: That is correct.

The Court: Then would this opinion that you now have, influence your verdict?

The Prospective Juror: Well, the evidence presented may substantiate what I already have in mind, which would make it—what is the word that you used in the question you have been arguing about here? —make it have a little more weight, in that light.

Mr. Sullivan:

Q. In other words, if the evidence that you hear in this courtroom confirms what you read or heard about this case in the past, it would merely make your present opinion that much stronger, is that it?

A. Well, if the evidence presented confirmed the opinion that I now have, it would, not maybe what I have read and

heard or talked about, but let's take the opinion as formed now.

Q. That is in your mind now?

A. Yes. If it is substantiated, the material which I have formed the opinion on, my answer is yes, but that is the weight that you are going to put to the witness. That is why I objected to the question.

Q. Well, let me ask you this, Mr. Campbell: Suppose that you yourself were on trial here today or, let's say, your wife. God forbid that she ever would be. But let's say for the purpose of my question, that it was your wife that was seated at the counsel table here today, charged with the identical offense that is charged against Mrs. Duncan, and [fol. 62] all you wanted your wife to have was a trial at the hands of 12 men and women who would be absolutely fair, unbiased and unprejudiced. Would you feel that she could get a trial, a fair and impartial trial, at the hands of 12 men and women of your present frame of mind?

A. No.

Mr. Sullivan: Well, I am going to renew my challenge, if it please the Court.

Mr. Gustafson: I would like to examine the juror again, your Honor.

The Court: All right. Go ahead.

Ladies and gentlemen, please cut out the laughing. Now, I have said that before and I don't want to have to say it again. It is entirely improper in this courtroom.

Mr. Gustafson: Mr. Campbell, it appears that you have read something about this case and that you have formed an opinion that is adverse to Mrs. Duncan with respect to her guilt of this charge against her. Now, and I believe that you previously answered that, notwithstanding that opinion, you could and you would impartially and fairly try the matter submitted to you, if you were selected as a juror. In that respect, would you base your verdict solely upon the evidence produced here in court?

(The prospective juror nodded affirmatively.)

Mr. Gustafson: Now, is that your frame of mind at the present time?

[fol. 63] The Prospective Juror: Yes.

Mr. Gustafson: Would you do that?

The Prospective Juror: That is my frame of mind, but when you put a hypothetical case in front of you and you have to answer it, it is presented to you and you have to answer something.

Mr. Gustafson: Yes, but now, Mr. Campbell, with that frame of mind; that is, that you would act fairly and impartially on the evidence submitted to you, notwithstanding any opinion that you might now have, based upon what you read, why then do you say that you wouldn't want jurors of your frame of mind?

The Prospective Juror: Well, I have a frame of mind now. If I were on this jury, I would be as impartial as humanly possible, to weigh the evidence presented, but I don't think that I would want to take my wife and have her set on the jury, with the conviction that I have at the present time, unless I knew the evidence that might be presented, to say whether the——

Mr. Gustafson: Yes, but you are talking now, are you not, Mr. Campbell, of your conviction at the moment before you hear the evidence?

The Prospective Juror: Absolutely. That is two different things.

Mr. Gustafson: Yes. Now, would you be willing to have 12 jurors of your frame of mind sit in judgment on your wife, if she were the defendant, if they could feel that they [fol. 64] could put aside any opinion that they had, and act, notwithstanding such opinion, decide the case on the basis of the evidence only, and act impartially and fairly on the matter submitted to them? Now, if you had 12 jurors of that frame of mind, in the trial of your wife on some charge, wouldn't you be satisfied with 12 such persons?

The Prospective Juror: Well, yes.

Mr. Gustafson: All right. And that is the kind of person you now are, is it not; that is, you are going to decide the case solely on the basis of the evidence?

The Prospective Juror: Now, that is what you would have to do. But——

Mr. Gustafson: Yes.

The Prospective Juror: But you have an opinion formed now.

Mr. Gustafson: That is correct.

The Prospective Juror: Because there are two different things that you are talking about.

Mr. Gustafson: Right. In other words, let's forget about the jury voting on guilt or innocence now, because the jury doesn't do that now. It waits until after the trial.

The Prospective Juror: Right.

Mr. Gustafson: Now, if you had 12 persons and your wife was on trial and you had 12 persons, each of them with your frame of mind; namely, that you would listen to the evidence, would carefully consider it, would base your verdict [fol. 65] solely on the evidence, notwithstanding any opinion that you might have to begin with, wouldn't you be satisfied to have your wife tried by 12 such jurors, 12 persons who would act fairly and impartially?

The Prospective Juror: Impartially, yes.

Mr. Gustafson: Wouldn't you be satisfied?

The Prospective Juror: Yes, if they would act fairly and impartially.

Mr. Gustafson: All right. I submit that the juror has not indicated any reason for challenge for cause.

Mr. Sullivan: I think he has, your Honor. My challenge stands.

The Court: If you yourself were on trial for murder, would you be willing to be tried by a jury in the same frame of mind that you now find yourself in?

The Prospective Juror: Well, I don't believe that I would, your Honor.

The Court: The challenge is allowed. The juror is excused.

(The prospective juror was excused.)

The Court: Call another name.

The Clerk: Richard W. Poole—P-o-o-l-e.

The Court: This juror, gentlemen, has asked to be excused on the grounds of hardship. What is your excuse?

The Prospective Juror: My father and I are in business together, Judge, and recently—not recently but five or six [fol. 66] months ago he had a heart attack and I have had the burden of operating the business and I hate to have myself in the position where the burden goes back to him, thereby creating——

The Court: Do you want to stipulate that he may be excused?

Mr. Sullivan: Yes, your Honor. I will stipulate that he may be.

Mr. Gustafson: So stipulate.

The Court: All right, you are excused.

(The prospective juror was excused.)

The Court: Call another name.

The Clerk: Donald D. Keller—K-e-l-l-e-r.

The Court: You were in the courtroom all day, were you not?

The Prospective Juror: Yes.

The Court: You heard everything that has been said here?

The Prospective Juror: Yes.

The Court: All right. You may inquire.

Mr. Sullivan:

Q. Mr. Keller, may I inquire as to your business or occupation, please?

A. I am a data analyst for Land-Air, Incorporated.

Q. Land-Air?

A. Yes.

Q. Is that a local concern here in Ventura?

A. No. It is a concern with headquarters in Chicago.

[fol. 67] Q. I see. This is a branch of it?

A. Yes.

Q. Of the Chicago office, is that correct?

A. Yes.

Q. Mr. Keller, have you had any previous experience as a trial juror in criminal cases?

A. Yes.

Q. Here in Ventura County?

A. Yes.

Q. And has that been recently?

A. Two years ago, I sat.

Q. Two years ago?

A. Yes.

Q. I see. And——

The Court: Mr. Sullivan, the Court is about to adjourn until some hour convenient and satisfactory to the attorneys. What hour would be appropriate? Two o'clock or 1:30?

Mr. Gustafson: 1:30.

Mr. Sullivan: Whatever is satisfactory to your Honor is satisfactory with me.

Mr. Gustafson: 1:30 would be fine, your Honor, with me.

The Court: Well, we will make it 1:45. You are excused until 1:45 this afternoon.

(Whereupon, at 11:59 o'clock A.M., the Court recessed proceedings until 1:45 o'clock P.M.)

[fol. 68] Ventura, California, February 16, 1959: 1:45 P.M.

The Court: Goldie M. Ferry, I think you stipulated that she might be excused?

Mr. Gustafson: Yes, Your Honor.

Mr. Sullivan: Yes, Your Honor, so stipulated.

The Court: Goldie M. Ferry is excused.

The Clerk: F-e-r-r-y.

The Court: Ferry, Ferry. Goldie M. Ferry is excused. There you are.

All right, the prospective jurors are all in the box.

Mr. Sullivan: Thank you, Your Honor.

The Court: Proceed.

Mr. Sullivan:

Q. Mr. Keller, I think I had just asked you three or four questions at the time we adjourned for the noon recess.

Have you had any prior experience as a trial juror in criminal cases?

A. Yes.

Q. And how long ago was that?

A. About two years.

Q. Have you ever sat as a trial juror in a case where a defendant was charged with the offense of murder?

A. No.

Q. Have you or has any member of your family or [fol. 69] anyone near and dear to you ever been the victim of any crime of assault?

A. No.

Q. Or ever had occasion to be a witness against any person charged with a similar offense?

A. No.

Q. You understand from what the court told the prospective jurors that Mrs. Duncan is charged in this indictment with the offense of murder?

A. Yes.

Q. Now, is there anything about the nature of that offense that would cause you to entertain any bias or prejudice against her?

A. No. I don't believe so.

Q. Well, you say you don't believe so. Is there any question in your mind about it?

A. I have never had to sit in judgment of anyone before. I don't know whether I have feelings against it or not. I just don't know.

Q. In other words, you recognize the fact that it is a serious obligation that a juror has to perform in a case of this nature; is it not?

A. Yes.

Q. Do you feel that you would be willing to undertake that responsibility?

A. Yes, I believe so.

[fol. 70] Q. Have you ever been connected or has anyone near and dear to you ever been connected with any law enforcement agency?

A. No.

Q. Assuming that certain law enforcement officers are called as witnesses in this case, would you be apt to give any greater credence to their testimony merely because they happened to be law enforcement officers?

Mr. Gustafson: Objected to on the same grounds as before, Your Honor.

The Court: Overruled.

The Prospective Juror: No, I don't believe so.

Mr. Sullivan:

Q. Well, Mr. Keller, you say you don't believe so. Is there any doubt in your mind about it?

A. No.

Q. You are certain that you wouldn't.

A. No—yes, I am certain.

Q. I understood you to mean you were certain. In the event that Mrs. Duncan should see fit to take the witness stand and testify as a witness in her own behalf, would you be apt to deny her the benefit of her own testimony merely because she happens to be the defendant in this case?

A. No, I don't believe so.

Q. Well, again you say you don't believe so. Is there any doubt in your mind about it?

A. I just don't know. I don't believe there would be any [fol. 71] doubt in my mind, but I just can't say for certain.

Q. You can't say for sure?

A. No.

Q. Do you subscribe to any of the local newspapers?

A. Yes, the Star Free Press.

Q. The Ventura Star Free Press?

A. Yes.

Q. And do you read any of the Los Angeles newspapers?

A. Infrequently, but occasionally.

Q. Probably the Sunday edition?

A. Yes.

Q. Do you sometimes also listen to news broadcasts on the radio?

A. No, very seldom.

Q. Very seldom?

A. Yes.

Q. Occasionally?

A. Oh, once a month or so if it happened to be in the car.

Q. Do you ever watch and listen to television news broadcasts?

A. Yes.

Q. Have you in the past read or heard anything about this case?

A. Oh, yes.

[fol. 72] Q. I take it that you have read some of the articles which have appeared in the Ventura Star Free Press concerning this case, have you?

A. Yes.

Q. And have you heard and watched any television programs, news broadcasts where this case was mentioned?

A. No.

Q. In addition to having read about this case in the Ven-

tura Star Free Press, have you ever discussed it with anyone?

A. Yes.

Q. With many people?

A. Maybe a dozen, just casual comments about it.

Q. I take it that you probably can't recall all of the people that you have discussed this case with?

A. Pretty much so. It wasn't that many.

Q. Well, the people that you discussed it with, did they purport to have any personal knowledge about the matters they discussed with you?

A. No.

Q. Do you know whether they had any personal knowledge?

A. No, I have no idea whether they did or not.

Q. You do not know?

A. No.

Q. And you have no idea as to whether or not any of [fol. 73] these persons might be witnesses in this case?

A. I hardly think it likely.

Q. You don't know, though?

A. No, not for an absolute fact.

Q. And as a result of what you read in the local newspaper and having discussed this matter with those people, did it cause you to form or express any opinion regarding the guilt or innocence of Mrs. Duncan?

A. Yes.

[fol. 74] Q. And that opinion, was it unfavorable to Mrs. Duncan?

A. Yes.

Q. And I take it that these people with whom you discussed this case, shared the same opinion which you had?

Mr. Gustafson: Objected to as incompetent, irrelevant and immaterial.

The Court: That objection is sustained.

Mr. Sullivan:

Q. Do you still have that opinion?

A. Yes, I feel I do, yes.

Q. And as a result of the opinion which you have formed, if you are accepted as a juror in this case, would it require

some evidence on the part of Mrs. Duncan to overcome that opinion?

A. Yes, I feel it would.

Q. As a result of the opinion which you have formed, do you feel that you could be fair and impartial as a juror in this case?

A. No.

Q. If—withdraw that for a moment—is there a Mrs. Keller?

A. Yes, there is.

Q. Assuming that your wife, Mrs. Keller, was on trial here today, charged with the identical offense that is charged against Mrs. Duncan, and you wanted your wife to have a jury composed of men and women who would [fol. 75] absolutely be fair and impartial, unbiased and unprejudiced, do you feel that she could receive a fair and impartial trial at the hands of a jury composed of men and women of your present frame of mind?

A. No.

Mr. Sullivan: We challenge the juror for cause, Your Honor.

Mr. Gustafson: May I examine, Your Honor?

Mr. Keller, could you not, despite the opinion that you formed, acting under the instructions of the judge to decide the case solely on the basis of the evidence that you hear, could you not impartially and fairly act upon the matter to be submitted to you?

The Prospective Juror: I don't believe so, truthfully. I don't think I could.

Mr. Gustafson: I have no objection to the challenge for cause, Your Honor.

The Court: All right, the challenge is allowed. You are excused.

(The prospective juror was excused.)

The Court: Call another name.

The Clerk: Nelle E. Holt—H-o-l-t; first name, N-e-l-l-e. Is that right, Nelle?

The Prospective Juror: Yes.

The Court: You have been in the courtroom all day, have you not?

[fol. 76] The Prospective Juror: Pardon?

The Court: You have been in the courtroom all day?

The Prospective Juror: Oh, yes.

The Court: You heard everything that has been said here?

The Prospective Juror: Yes.

The Court: All right. You may inquire.

Mr. Sullivan: Thank you, Your Honor.

Q. Mrs. Holt, I am going to ask you if you will try to keep your voice up when you answer the questions which I ask you, because the court reporter over here must hear your answers and put them down for the purpose of this record. Will you try and do that please?

A. (The prospective juror nods affirmatively.)

Q. Is it Miss Holt or Mrs. Holt?

A. Mrs. Mrs.

Q. Mrs. Holt?

A. Yes.

Q. May I inquire as to your business or occupation, Mrs. Holt?

A. I am a homemaker.

Q. And is there a Mr. Holt?

A. There is.

Q. And may I inquire as to his business?

A. Real estate broker.

Q. Is Mr. Holt a real estate broker here in Ventura [fol. 77] County?

A. Yes, sir.

Q. Mrs. Holt, have you had any previous experience as a trial juror in criminal cases?

A. No, sir.

Q. You understand from what you heard the court say to the prospective jurors this morning, that Mrs. Duncan is charged in this indictment with the offense of murder?

A. Yes, sir.

Q. And the alleged victim of this alleged murder is a woman by the name of Olga Duncan?

A. Right.

Q. And the evidence in this case will undoubtedly disclose that Olga Duncan was the daughter-in-law of Elizabeth Duncan. Would the fact that Olga Duncan, the alleged victim of this alleged murder, happened to be the daughter-

in-law of Mrs. Duncan, cause you to entertain any bias or prejudice against Mrs. Duncan?

Mr. Gustafson: I am going to object to that question, Your Honor, as calling for the juror's knowledge of evidence which she hasn't yet heard.

Mr. Sullivan: Well, I think we have a right to inquire into this, in a case such as the nature of this, Your Honor.

The Court: Rephrase your question.

Mr. Sullivan: All right.

[fol 78] Q. If the evidence in this case discloses that Olga Duncan, the alleged victim of this alleged murder, was the daughter-in-law of Mrs. Elizabeth Duncan, the defendant in this case, would that fact cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. Have you or has any member of your family or anyone near and dear to you been connected in any way with any law-enforcement agency?

A. No.

Q. Have you or has any member of your family or anyone near and dear to you ever been the victim of a crime of assault?

A. No.

Q. Or ever had occasion to be a witness against any person charged with such a crime?

A. No.

Q. Now, assuming that certain witnesses are called in this case who happen to be law enforcement officers, would the fact that they are law enforcement officers cause you to give any greater credence to their testimony merely because they happen to be law enforcement officers?

Mr. Gustafson: Your Honor, may I ask that the question be completed? Greater than what? Greater credence to their testimony than what?

Mr. Sullivan: Than that of any other witness.

[fol. 79] A. No.

Mr. Sullivan:

Q. In the event that Mrs. Duncan should see fit to take the witness stand and testify as a witness on her behalf,

would you be apt to deny her the benefit of her own testimony, merely because she happens to be the defendant in this case?

A. Yes.

Q. In other words, you feel that you couldn't, if you are accepted as a juror in this case, accord to her the benefit of her testimony?

A. No.

Q. And as a result of that feeling on your part, I take it that you feel that you could not act fairly and impartially as a juror?

A. Yes.

Q. In other words, you have some fixed opinion?

A. Yes, sir.

Q. Regarding this case, is that correct?

A. Yes, sir.

Q. And I take it from your answers, Mrs. Holt, that that opinion is one that is unfavorable to my client, Elizabeth Duncan, is that correct?

A. Yes.

Mr. Sullivan: We challenge the juror, Your Honor.

Mr. Gustafson: I would like to examine the juror, Your Honor.

[fol. 80] Mrs. Holt, assuming that you do have, as I believe you stated you had, an opinion with respect to the guilt of Mrs. Duncan, could you, notwithstanding that opinion, follow the instructions of Judge Blackstock and decide the case fairly and impartially on the basis presented to you here in court?

The Prospective Juror: No, sir.

Mr. Gustafson: You could not?

The Prospective Juror: No, sir.

Mr. Gustafson: I have no objection to the challenge for cause.

The Court: All right. The challenge is allowed. You are excused.

(The prospective juror was excused.)

The Court: Call another name.

The Clerk: Russell F. Chambers—C-h-a-m-b-e-r-s.

The Court: Mr. Chambers, you have been here in attendance on the court all day, haven't you?

The Prospective Juror: Yes.

The Court: And you have heard everything that has gone on?

The Prospective Juror: Yes, sir.

The Court: So you know what the case is all about?

(The prospective juror nodded affirmatively.)

The Court: All right, you may inquire.

Mr. Sullivan: Very well, your Honor.

[fol. 81] Q. Mr. Chambers, may I inquire as to your business or occupation, please?

A. I am retired.

Q. And may I inquire as to what your occupation was prior to your retirement?

A. I was a market owner.

Q. Was that in Ventura County?

A. Yes, sir.

Q. Have you had any previous experiences as a trial juror in criminal cases?

A. No, sir.

Q. You understand from what the court said to the prospective jurors this morning, that Mrs. Duncan is charged in this indictment with the offense of murder?

A. Yes, sir.

Q. And the alleged victim of this alleged murder that is charged in this indictment, is a woman by the name of Olga Duncan. If the evidence in this case should disclose that Olga Duncan was the daughter-in-law of Elizabeth Duncan, this defendant seated here at counsel table, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. Have you ever been or has any member of your family or anyone near and dear to you, connected in any manner with any law enforcement agency?

[fol. 82] A. No, sir.

Q. Have you or has any member of your family or anyone near and dear to you, ever been the victim of any crime of violence?

A. No, sir.

[fol. 83] Q. Have you ever had occasion or has anyone

near and dear to you ever had occasion to be a witness against any person charged with some crime of violence?

A. No, sir.

Q. Do you subscribe to any of the local papers, Mr. Chambers?

A. Yes, sir, I take the Ventura Free Press and the Santa Paula Chronicle.

Q. I see. Have you been subscribing to those papers, let's say during the last three months?

A. Yes, sir.

Q. Do you ever listen to any news broadcasts over the radio?

A. No, sir.

Q. Did you ever have occasion to see and hear news broadcasts on television?

A. Very seldom, probably once in the last six months.

Q. Have you ever had occasion to see and hear any television broadcasts concerning this particular case?

A. No, sir.

Q. I take it that the papers which you subscribe to did carry newspaper articles concerning this case?

A. Yes, sir.

Q. Is that right?

A. Yes.

[fol. 84] Q. And you read some of those articles?

A. Yes, sir.

Q. In addition to having read something in the newspaper concerning this case, have you ever discussed it with anyone?

A. Oh, yes, sir.

Q. With many people?

A. Yes, quite a few. I would say a dozen or more.

Q. It was a matter of quite common talk?

A. It has been quite common talk in the county in the last two or three months.

Q. At least since some time in December?

A. Yes, sir.

Q. And these people that you discussed this case with, do you know whether they had any personal knowledge of the matters that they discussed with you?

A. No, sir.

Q. You don't know that?

A. No, sir.

Q. And do you know whether any of these people that you talked to about this case are likely to be witnesses in this case or not?

A. No, sir.

Q. You don't know that?

A. No, sir.

Q. As a result of what you read and the discussions [fol. 85] that you had with other people concerning this case, did you, yourself, form any opinion?

A. No, sir.

Q. You never formed any opinion regarding the guilt or innocence of Mrs. Duncan?

A. No, sir.

Q. Have you ever expressed any opinion?

A. No, sir, I haven't.

Q. Have you ever heard any of these people that you discussed this case with express an opinion?

Mr. Gustafson: Objected to as incompetent, irrelevant and immaterial.

The Court: Sustained.

Mr. Sullivan:

Q. In the event that you are accepted as a juror in this case, do you feel that you could completely dissociate from your mind what you read in the past concerning this case or what you have heard other people discuss concerning it and decide the case solely and exclusively from the evidence as you hear it in this courtroom?

A. Yes, sir, I could.

Q. Now, in the event that certain law enforcement officers should testify as witnesses in this case, would you be apt to give any greater credence to their testimony merely because they happened to be law enforcemnt officrs? I mean would you be apt to give greater credence to their testimony than you would that of any other witness?

[fol. 86] A. No sir, I don't believe I would.

Q. Well, you say, Mr. Chambers, that you don't believe you would. Is there some doubt in your mind?

A. Well, these law officers, as you say, they are supposedly accredited witnesses where they are under oath as

well as anyone else, but I don't know that I would take their word any more than I would anyone else's.

Q. Well, you say you don't know that you would.

A. Well, I do know. Let's put it that way.

Q. That is what I wanted to know.

The Court: You do know that you would not?

The Prospective Juror: I do know that I would not, yes, sir.

Mr. Sullivan:

Q. All right. And in the event that Mrs. Duncan should see fit to take the witness stand and testify as a witness in her own behalf, would you be apt to deny her the benefit of her own testimony merely because she happens to be the defendant in this case?

A. No, sir, I wouldn't.

Q. You realize, do you not, that there are two sides to a lawsuit?

A. Yes, sir.

Q. You feel that if you are accepted as a juror in this case that you could keep your mind open concerning the guilt or innocence of Mrs. Duncan until you have heard all of the evidence in this case, do you?

[fol. 87] A. Yes, I do.

Q. By that I mean not only the evidence offered on behalf of the people, but evidence offered on behalf of the defendant as well.

A. Yes.

Q. Is that right?

A. Yes.

Q. Is there anything about the nature of the charge, being murder, that would cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. Well, let's assume that you were on trial here today or someone near and dear to you was on trial for the very offense charged in this indictment, and you wanted the case to be tried before a jury composed of men and women who are absolutely unbiased and unprejudiced and whom you wanted to return an absolutely fair and impartial verdict. Do you feel that you could receive such a trial at the hands

of a jury composed of men and women, of your present frame of mind?

A. I surely do.

Q. And you know of any reason why you could not give to Mrs. Duncan a fair and impartial trial?

A. None whatsoever.

Mr. Sullivan: Thank you, Mr. Chambers.

Mr. Holzer?

[fol. 88] A. Yes, sir.

Q. May I inquire as to your business or occupation, Mr. Holzer?

A. Beekeeper?

Q. I'm sorry?

A. Beekeeper.

Q. Beekeeper?

A. Yes.

Q. Mr. Holzer, have you had any prior experience as a trial juror in criminal cases?

A. No, sir.

Q. You understand from what the court said to the ladies and gentlemen in the jury box this morning that Mrs. Duncan is charged in this indictment with the offense of murder?

A. Yes.

Q. Is there anything about the nature of that charge that would cause you to entertain any bias or prejudice against her?

A. No, sir.

Q. The alleged victim of this murder, or alleged murder is a woman by the name of Olga Duncan. Now, if the evidence in this case should disclose that Olga Duncan was the daughter-in-law of Elizabeth Duncan, the defendant in this case, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

[fol. 89] A. No, sir.

Q. Have you ever been or has anyone near and dear to you ever been connected with any law enforcement agency?

A. Yes.

Q. Have you, yourself?

A. Very little.

Q. Pardon?

A. No, sir.
Q. Has some relative of yours?
A. Yes, sir.
Q. Is that a close relative?
A. Yes, sir.
Q. How close?
A. Father.
Q. Your father?
A. Yes, sir
Q. Is he presently engaged as a law enforcement officer?
A. No, sir.
Q. But he was at some time during his lifetime?
A. Yes, sir.
Q. Was that in Ventura County?
A. No, sir.
Q. Was it outside of the State of California?
A. That's right.
Q. All right. Well, now, it is possible that certain law [fol. 90] enforcement officers may testify in this case. Would the fact that your father at one time during his lifetime was engaged as a law enforcement office cause you to give greater credence to the testimony of a law enforcement officer than you would that of any other witness?
A. I would be inclined to do so, yes.
Q. You feel that it would?
A. Yes, sir.
Q. You feel that because of your close kinship with your father and his occupation as a law enforcement officer that you would believe that law enforcement officer couldn't do anything else but tell the truth; is that right?
A. No, sir.
Q. Do you feel that you would give greater credence to his testimony?
A. Yes.
Q. By reason of the fact?
A. Yes, sir.
Q. Do you feel that that fact would prevent you from acting fairly and impartially as a juror in this case?
A. No, sir.
Q. Well, in the event some law enforcement officer should testify in this case, would you be apt to give any greater credence to his testimony merely because he is a law en-

[fol. 91] forcement officer; that is, any greater credence than you would that of any other witness?

A. I would be inclined to do so, yes, sir.

Q. You would be inclined to do so?

A. Yes.

Q. It would be difficult for you not to do so, would it?

A. That's right.

Q. Do you feel that that might prevent you from acting fairly and impartially in this matter?

A. Yes.

Q. Mr. Holzer, do you subscribe to any of the local newspapers?

A. No, sir, but I have had occasion to read them.

Q. And you have read some of the local papers, some of the articles in them concerning this particular case?

A. Yes.

Q. Have you listened to any radio broadcasts concerning this particular case?

A. Yes, sir.

Q. Have you seen and heard any television news broadcasts?

A. Yes, sir.

Q. Concerning this case? And as a result of what you—withdraw that for the moment.

Additionally, have you discussed this case with any [fol. 92] persons?

A. Yes, sir.

Q. With many people?

A. Less than a dozen.

Q. Less than a dozen. The people with whom you have discussed this case, did they purport to have some personal knowledge concerning it?

A. No.

Q. Did they tell you that they didn't or is it that you just don't know.

A. I don't know.

Q. You just don't know whether they had any personal knowledge?

A. No, I don't.

Q. And with respect to those people with whom you discussed this case, do you have any idea as to whether any of them may be witnesses in this case?

A. I don't know.

Q. You don't know that. As a result of what you have read and what you have discussed with others, or heard discussed by others concerning this case, have you, yourself, formed any opinion regarding the guilt or innocence of Mrs. Duncan?

A. Yes.

Q. And is that opinion which you have formed favorable or unfavorable to Mrs. Duncan?

[fol. 93] A. Unfavorable.

[fol. 94] Q. As the result of the opinion which you have formed, do you feel that you could act fairly and impartially as a juror in this case?

A. No, sir.

Mr. Sullivan: We still will challenge this juror for cause, your Honor.

Mr. Gustafson: Mr. Holzer, I think that you heard Judge Blackstock say that this is a criminal case, that Mrs. Duncan is presumed to be innocent until the contrary is proved by the prosecution beyond a reasonable doubt. Are you telling me that you would not follow that instruction of Judge Blackstock?

The Prospective Juror: I would follow his instructions.

Mr. Gustafson: You would follow that?

The Prospective Juror: Yes.

Mr. Gustafson: Could you follow that? You could and you would follow that?

The Prospective Juror: I would try.

Mr. Gustafson: You would try?

The Prospective Juror: Yes.

Mr. Gustafson: And would you—well, let me ask you first—could you, notwithstanding the opinion that you have regarding Mrs. Duncan's guilt, could you, nevertheless, in considering this case, if you were selected as a juror, base your verdict solely on the evidence which you heard presented here in court?

The Prospective Juror: I don't know.

[fol. 95] Mr. Gustafson: You don't know whether you could?

The Prospective Juror: No, sir.

Mr. Gustafson: All right, I accept the challenge for cause, your Honor.

The Court: All right. The challenge is allowed.

(The prospective juror was excused.)

The Court: Call another name.

The Clerk: Charles J. Carmack—C-a-r-m-a-c-k.

The Court: Mr. Carmack, where do you live?

The Prospective Juror: Oxnard. El Rio.

The Court: How long have you lived in this County?

The Prospective Juror: Since, with the exception of the Service, since '47.

The Court: Did you ever serve on a jury in a criminal case?

The Prospective Juror: No, sir.

The Court: Do you know of any reason why you shouldn't sit on this jury?

The Prospective Juror: Why I shouldn't?

The Court: Yes. Could you be fair and impartial if you served on this jury?

The Prospective Juror: I don't really think so, sir.

The Court: What?

The Prospective Juror: I don't really think so.

The Court: All right. You may inquire.

Mr. Sullivan:

Q. Well, Mr. Carmack, what is your business or occupa-
[fol. 96] tion, please?

A. I am a bank employee in Oxnard.

Q. And in answer to the Court's question, you indicated that you did not think that you could be fair and impartial as a juror in this case, is that correct?

A. Yes, sir.

Q. Is that because you have already formed some opinion regarding the guilt or innocence of Mrs. Duncan?

A. Yes, sir.

Q. And was that opinion formed because or by reason of something that you read or heard concerning this particular case?

A. Yes, sir.

Q. And that opinion which you have formed, was it favorable or unfavorable to Mrs. Duncan?

A. Unfavorable.

Q. And as a result of that opinion, you do not feel that

you could act fairly and impartially as a juror, is that correct?

A. No.

Q. You mean that you could not?

A. No, sir, I couldn't.

Mr. Sullivan: We will challenge the juror for cause.

Mr. Gustafson: Mr. Carmack, you have been in the courtroom and you will now know, I believe, that all the prospective jurors so far examined have read something about the [fol. 97] case. Does the mere fact that you have read something about the case and have formed an opinion mean that you could not follow an instruction given by Judge Blackstock that if you sit as a juror, you must decide the case solely upon the basis of the evidence that you hear here in the courtroom?

The Prospective Juror: I will probably relate what I have read with what I have heard.

Mr. Gustafson: In other words, you are incapable of deciding the case solely on the basis of the evidence presented in court? Is that your statement?

The Prospective Juror: Yes, sir.

Mr. Gustafson: Well, I will accept this challenge for cause, if the juror is incapable of doing that.

The Court: All right. You are excused.

(The prospective juror was excused.)

The Court: Call another name.

The Clerk: James H. Hunt—H-u-n-t.

The Court: Mr. Hunt, you have been here in the courtroom all day?

The Prospective Juror: Yes.

The Court: You have heard everything that has been said here, so that you know generally what the case is all about?

The Prespective Juror: Yes.

The Court: All right. You may inquire.

Mr. Sullivan:

Q. Mr. Hunt, may I inquire as to your business or occupation, please?

[fol. 98] A. Construction work.

Q. Construction worker?

A. Yes, sir.

Q. Have you had any previous experience as a trial juror in criminal cases?

A. No, sir.

Q. You understand, from what the Court has said to the prospective jurors this morning, that Mrs. Duncan is charged in this indictment with the offense of murder, do you not?

A. Yes, sir.

Q. Would the nature of that charge cause you to entertain any bias or prejudice against her?

A. I think so in this case.

The Court: You mean to say that the mere fact that she is charged with murder would cause you to be biased against her, the mere fact that she is charged?

The Prospective Juror: Well, from what I have read in this—

The Court: Under the law, she is presumed to be innocent until she is proved to be guilty. And you mean the mere fact that she is charged with murder would cause you to be biased against her?

The Prospective Juror: Well, I believe in this case—

The Court: What?

The Prospective Juror: I believe in this case there was [fol. 99] an expectant mother.

The Court: Well, you may have some other reason or some opinion about the case, but does the mere fact that she is charged with murder cause you to be biased against her?

The Prospective Juror: No, sir.

Mr. Sullivan: Shall I proceed?

The Court: Yes.

Mr. Sullivan:

Q. Now, Mr. Hunt, I take it from the answers that you gave to His Honor's question, that you have read or heard something about this case in the past, is that correct?

A. Yes, sir.

Q. And was that something that you read in the local newspapers?

A. Yes.

Q. And in addition to what you read in the local papers, did you hear this case discussed by other persons?

A. Yes, I did.

Q. And by many other persons?

A. About a dozen or so.

Q. A dozen or so?

A. Yes.

Q. And these people that you heard discuss it, did they purport to have some personal knowledge concerning the facts or circumstances of this case?

A. No.

[fol. 100] Q. You don't know?

A. No, I'm not sure.

Q. And do you have any knowledge as to whether any of the persons with whom you discussed this case, might become witnesses in this case?

A. (Witness nods head negatively.)

Q. You shake your head no. Do you mean that you do not know?

A. I do not know.

Q. Well, as a result of what you read or heard discussed concerning this case, have you yourself formed some opinion regarding the guilt or innocence of Mrs. Duncan?

A. Yes, I have.

Q. And was that opinion which you formed, favorable or unfavorable to Mrs. Duncan?

A. Unfavorable.

Q. And as a result of the opinion which you yourself formed concerning her guilt or innocence of the charge contained in this indictment, do you feel that you could act fairly and impartially as a juror in this case?

A. No, I don't think so.

Mr. Sullivan: We will challenge Mr. Hunt.

Mr. Gustafson: Mr. Hunt, you formed your opinion, which is unfavorable to Mrs. Duncan, based upon what you read in the newspapers, is that correct?

The Prospective Juror: Yes.

[fol. 101] Mr. Gustafson: Now, is it your statement that because you read facts in the newspapers, they must necessarily be true and therefore what you hear as evidence in this court is not going to affect your decision?

The Prospective Juror: If I heard evidence to the contrary of what I read, my opinion would be changed, of course.

The Court: That question "because you read facts in the newspapers"—because you read statements in the newspaper?

Mr. Gustafson: Read statements, yes.

In other words, then you are of the frame of mind that you would listen to the evidence presented here in court, is that correct?

The Prospective Juror: Yes.

Mr. Gustafson: Now, would you follow the Judge's instructions that, regardless of what you may have read or heard before, from this point, starting in this court at this time, Mrs. Duncan is presumed to be innocent until and unless she is proved guilty in court here by evidence presented in court; would you follow that instruction?

The Prospective Juror: I don't know if I could or not.

Mr. Gustafson: You don't know whether you could follow the Judge's instruction, that that is the method by which you are to determine a person's guilt or innocence?

The Prospective Juror: I am not sure.

Mr. Gustafson: So that you are not sure then whether you could, notwithstanding the fact that you have an opinion [fol. 102] of her guilt, the defendant's guilt, you are not sure, notwithstanding that opinion, that you could give her a fair and impartial trial?

The Prospective Juror: I am not sure that I could or not.

Mr. Gustafson: All right. I accept the challenge for cause.

The Court: All right. You are excused. Call another name.

(The prospective juror was excused.)

The Clerk: Martha Baradat—B-a-r-a-d-a-t.

How do you pronounce that?

The Prospective Juror: Martha Baradat.

The Clerk: Martha Baradat—B-a-r-a-d-a-t.

The Court: Is it Miss or Mrs.?

The Prospective Juror: Mrs.

The Court: Mrs.?

The Prospective Juror: Yes.

The Court: Where do you live?

The Prospective Juror: Oxnard.

The Court: How long have you lived there?

The Prospective Juror: About 20 years.

The Court: Have you ever served on jury in a criminal case?

The Prospective Juror: No, I haven't.

The Court: You have been here all day?

[fol. 103] The Prospective Juror: Yes, I have.

The Court: And you have heard everything that has been said?

(The prospective juror nodded affirmatively.)

The Court: You know what the case is all about?

(The prospective juror nodded affirmatively.)

The Court: All right. You may inquiry.

Mr. Sullivan: Thank you, your Honor.

Q. Mrs. Baradat, may I inquire as to your business or occupation, please?

A. I am a housewife.

Q. And is there a Mr. Baradat?

A. Yes, there is.

Q. And his occupation, please?

A. He's employed by a farm implement company.

Q. Pardon?

A. A farm implement company.

Q. Mrs. Baradat, you indicated in response to His Honor's questions, that you are aware of the fact that Mrs. Duncan is charged in this indictment with the offense of murder, is that correct?

A. Yes.

Q. Is there anything about the nature of that charge, that would cause you to entertain any bias or prejudice against her?

A. You mean the murder charge?

[fol. 104] Q. Yes, just the charge of murder itself.

A. No.

Q. The alleged victim of this alleged murder is a woman by the name of Olga Duncan. If the evidence in this case should disclose that Olga Duncan was the daughter-in-law of Elizabeth Duncan, the defendant here at the counsel table, would that cause you to entertain any bias or prejudice against her?

A. No.

Q. If the evidence in this case should further disclose that Olga Duncan, at the time she met her death, was pregnant, would that fact cause you to entertain any bias or prejudice against Elizabeth Duncan?

A. No.

Q. Have you or has any member of your family or anyone near and dear to you, ever been the victim of a crime of assault or passion?

A. No.

Q. Or ever had occasion to be a witness against any person charged with such a crime?

A. No.

Q. Are you or anyone near and dear to you connected in any manner with the District Attorney's office of this [fol. 105] County?

A. No.

Q. Or any law enforcement agency?

A. No.

Q. It is possible that certain law enforcement officers may testify as witnesses for the People in this case. If they do, would you be apt to give any greater credence to their testimony merely because they happen to be law enforcement officers than you would that of any other witness?

A. No. They are under oath to tell the truth.

Q. Yes. But you feel that you could weigh their testimony by the same standard as you would that of any other witness?

A. I think so.

Q. Is there any doubt in your mind about it?

A. Well, no. Really, no.

Q. Now, in the event that Mrs. Duncan should see fit to take the witness stand and testify as a witness in this case, would you be apt to deny her the benefit of her own testimony, merely because she happened to be charged with this offense?

A. No.

Q. Do you subscribe to any of the local newspapers?

A. Yes.

Q. What papers?

A. The Oxnard-Press Courier.

Q. The Oxnard-Press?

[fol. 106] A. Yes.

Q. And in addition to the Oxnard-Press, do you read any other newspapers from time to time?

A. Well, occasionally.

Q. Do you read some of the Los Angeles papers occasionally?

A. Occasionally.

Q. I taken it then that is probably generally the Sunday editions?

A. Yes.

Q. Additionally, do you ever listen to radio news broadcasts?

A. Yes.

Q. You listen to the broadcasts which come from the local radio stations here in Ventura?

A. Yes, I do.

Q. And, additionally, then, do you sometimes watch and hear television broadcasts of news events?

A. Occasionally.

Q. Now, from reading the newspapers and listening to news broadcasts, both by way of radio and television, have you heard or read anything about this particular case?

A. Yes, I have.

Q. And in addition to what you heard or read about it, have you heard it discussed by any person?

A. Yes.

[fol. 107] Q. Some of your neighbors talked to you about it?

A. Uh-huh.

Q. Other people talk to you about it?

A. (The prospective juror nodded affirmatively.)

Q. Could you just give me roughly an estimate of the number of people that you have either discussed this with or heard discuss it?

A. Well, from 8 to 10, I would say.

[fol. 108] Q. And these people that you discussed this case with or heard discuss it, do you know whether they purported to have any personal knowledge of the facts or circumstances concerning this case?

A. No.

Q. You don't know?

A. No, I don't believe that any of them would know, I am positive.

Q. You are certain of that?

A. Yes.

Q. Do you have any knowledge or any opinion as to whether any of these people with whom you have discussed this case or heard discuss it are likely to be witnesses in this case?

A. I am positive they won't be.

Q. Now, as a result of what you read or heard, concerning this particular case did you, yourself, form any opinion regarding the guilt or innocence of Mrs. Duncan?

A. Yes, I did.

Q. And was that opinion favorable or unfavorable to her?

A. Unfavorable.

Q. Pardon?

A. Unfavorable.

Q. Unfavorable. As a result of the opinion which you, yourself, formed concerning this particular case, do you [fol. 109] believe that you could act fairly and impartially as a trial juror in this case?

A. Well——

Mr. Gustafson:

Mr. Gustafson: Your Honor—pardon me, Mrs. Baradat—I am going to object to that question as being confusing and improper and incompetent, irrelevant and immaterial. He said as a result of the opinion did she believe that she could act fairly and impartially, when the law is whether she can act fairly and impartially despite the opinion.

The Court: Yes, I know. I think you better reframe your question.

Mr. Gustafson: Notwithstanding that.

Mr. Sullivan: I will reframe the question, your Honor.

Q. Despite the opinion which you have formed in this particular case, do you feel that you could act fairly and impartially as a trial juror in this case?

A. To be truthful, I can't say whether I could or not.

Q. Let me ask you this question, Mrs. Baradat——

A. Baradat.

Q. Baradat?

A. Yes.

Q. Let's assume that you, yourself, were seated in this chair where Mrs. Duncan is today and you, God forbid, were charged with the identical offense that she is charged with; and you wanted to have your case tried before 12 men [fol. 110] and women who would be absolutely fair and impartial, unbiased and unprejudiced. Would you feel that you could receive a fair and impartial trial at the hands of 12 men and women of your present frame of mind?

A. Well, I still don't know.

Q. You don't know?

A. No.

Q. Do you feel that the opinion which you have already formed concerning this case would influence your verdict in this matter?

A. Well, I don't know what to say. I am just afraid to say due to the fact that I might feel that way. I wouldn't know how—I have never been put to this test before and I just wouldn't know.

Q. I realize that you haven't, Mrs. Baradat. Only you know your own mind.

A. No, I don't—I'm afraid not.

Q. You are afraid you can't?

A. No.

Q. You feel that it would to some extent prevent you from being fair and impartial; is that it?

A. Yes, I think so.

Mr. Sullivan: We will challenge this juror for cause, your Honor.

Mr. Gustafson: Mrs. Baradat, you mean to say that notwithstanding the fact that Judge Blackstock will tell you to [fol. 111] decide this case whether Mrs. Duncan is guilty or not guilty solely on the basis of the evidence that you hear presented to you as a juror, that you wouldn't do that?

A. Well, I would certainly want to do it.

Q. Well, if you would want to do it, you could do it, couldn't you? Pardon?

A. I don't know.

Q. You don't know whether you could decide the case on the evidence?

A. No.

Q. That is, notwithstanding any opinion you may have

based on what you read in the newspapers or heard discussed with your neighbor, notwithstanding that—you understand, Mrs. Baradat, nobody is asking you to erase something from your mind; it would be impossible to do—the question is, notwithstanding the fact that you might have an opinion of her guilt, could you nevertheless follow the instructions of the Court and give the defendant a fair trial?

Mr. Sullivan: I think that question has been asked and answered. She testified that she didn't know whether she could or not.

Mr. Gustafson: I have a right to ask her the same thing.

The Prospective Juror: I do feel the same.

Mr. Gustafson: What is that?

The Court: What is the answer?

Mr. Gustafson: She doesn't know. I make no opposition [fol. 112] to the challenge for cause.

The Court: All right, the challenge is allowed. You are excused.

(Prospective juror excused.)

The Clerk: Your Honor, Mr. Borse, the absentee, is now in court.

The Court: What?

The Clerk: Mr. Charles W. Borse, B-o-r-s-e, he was the only absentee and he is now in court.

The Court: It was stipulated that his name may be put in the box, wasn't it?

Mr. Gustafson: Yes.

Mr. Sullivan: Yes, your Honor.

The Court: Put his name in the box.

The Clerk: Walter W. Boynton, B-o-y-n-t-o-n.

The Court: Where do you live, Mr. Boynton?

The Prospective Juror: Fillmore. I live in Santa Paula, but I am from Fillmore originally.

The Court: What?

The Prospective Juror: I live in Santa Paula.

The Court: How long have you lived there?

The Prospective Juror: Since '46.

The Court: Have you ever served on a jury in a criminal case?

The Prospective Juror: No, sir, just a drunk driving case is all.

[fol. 113] The Court: You have been here all day, haven't you?

The Prospective Juror: How long, sir?

The Court: You have been here in court most of the day?

The Prospective Juror: All day, sir.

The Court: And you have heard everything that has been said here?

The Prospective Juror: Yes, I have.

The Court: There is nothing the matter with your hearing, is there?

The Prospective Juror: No, sir.

The Court: If you should serve on this jury, would you be able to act fairly and impartially?

The Prospective Juror: I don't think I could serve, sir.

The Court: What?

The Prospective Juror: I don't think I could serve on this jury. I have orange to smudge.

The Court: What?

The Prospective Juror: Orange to smudge. If I smudged over after midnight, I would be tired the next day.

The Court: You may inquire.

Mr. Sullivan:

Q. I take it from what you stated to His Honor that you are a rancher; is that correct?

A. That's right.

Q. And you understand from what the Court said to the prospective jurors this morning that Mrs. Duncan is charged in this indictment with the offense of murder, do you not?

[fol. 114] A. I do, sir.

Q. Is there anything about the nature of that particular charge that would cause you to entertain any bias or prejudice against her?

A. Well, I have an opinion formed.

Q. In other words, you have already formed some opinion regarding the guilt or innocence of Mrs. Duncan so far as this particular case is concerned; is that right?

A. I have.

Q. And that opinion which you formed was the result of something that you read or heard about the case?

A. Well, read in the newspapers, mostly.

Q. Mostly what you read in the newspapers?

A. That's right.

Q. And as a result of the opinion which you formed, do you feel that you could act fairly and impartially as a trial juror in this case?

A. I don't believe I could, sir.

Mr. Sullivan: We will charge this juror for cause, your Honor, without taking further time.

Mr. Gustafson: Mr. Boynton, you mean that you could not do your duty as a juror and fairly and impartially try the case despite an opinion that you have formed as to the guilt of the defendant?

The Prospective Juror: Well, I don't believe I could.

Mr. Gustafson: You would not follow the Judge's instruc-
[fol. 115] tions that you are to decide the case solely on the basis of the evidence presented here in court?

The Prospective Juror: Well, sure, I would follow the instruction.

Mr. Gustafson: Would you follow them?

The Prospective Juror: Yes.

Mr. Gustafson: Then you would decide the case then solely on the basis of the evidence despite any opinion you might have as to the guilt or innocence of the defendant; isn't that right?

The Prospective Juror: Well, I would still have some opinion first.

Mr. Gustafson: Yes, I am not saying that you wouldn't have an opinion. I am simply saying that despite the fact that you have an opinion, would you not follow Judge Blackstock's instruction that you are to decide the case not on your opinion, but on the evidence you hear in court? Would you follow him, follow that instruction that he gives you?

The Prospective Juror: Well, I don't know if I could or not, sir.

Mr. Gustafson: You don't know whether you could. Would your answer be the same with respect to following his instruction if he tells you, as he has already told the prospective jurors, that this defendant is presumed to be

innocent and she carries that presumption with her unless and until I prove beyond a reasonable doubt that she is guilty? You wouldn't pay any attention to that instruction; [fol. 116] is that it?

The Prospective Juror: Well, I know that is the law. I have heard that for years.

Mr. Gustafson: Wouldn't you follow it?

The Prospective Juror: Yes.

Mr. Gustafson: So that if the case opened now and I didn't put on any evidence whatever, then despite the fact that from what you read in the newspapers you concluded that Mrs. Duncan was guilty, you, nevertheless, would follow the Judge's instructions and return a verdict of not guilty, would you not, assuming that I didn't present any evidence whatever?

The Prospective Juror: I don't believe I could do that.

Mr. Gustafson: You couldn't do that?

The Prospective Juror: No.

Mr. Gustafson: You mean even though I presented no evidence at all, you would walk out of this courtroom and find Mrs. Duncan guilty just because you formed that opinion from the newspapers; is that it?

The Prospective Juror: Well, I read all the articles there was, that was in the papers, I believe.

Mr. Gustafson: I understand that, Mr. Boynton. What I am asking you is simply this: Based on your present opinion, if the case started and I presented no evidence whatever in court, you would go out and vote her guilty based on what you read in the newspapers, even though the Judge tells you that the only thing that is evidence is what you hear in court; is that true?

[fol. 117] The Prospective Juror: I am all mixed up now.

Mr. Gustafson: Well, I am just trying to ascertain, Mr. Boynton, whether you understood what the Judge said. Did you?

A. Yes.

Q. That she is presumed to be innocent?

A. Yes.

Q. And you understood what he said when he said that she is presumed to be innocent unless and until I prove her guilty beyond a reasonable doubt? Did you understand that?

A. I do.

Mr. Gustafson: Now, if I don't prove her guilty beyond a reasonable doubt by evidence presented in this court, would you go out and vote that she is guilty anyway? If I didn't prove in court here that she was guilty, would you, just because you read something in the newspaper, go out and vote that she is guilty despite my lack of proof?

The Prospective Juror: I would have to have proof.

Mr. Gustafson: Yes, but I am saying, suppose you didn't have any proof here in the courtroom, would you go out to the jury room and vote her guilty anyway? You wouldn't do that, would you?

The Prospective Juror: I don't believe I would.

Mr. Gustafson: Well, as a matter of fact, you would be able to follow, would you not, the instruction of the Court that you are not to vote guilty unless you are convinced [fol. 118] beyond a reasonable doubt from the evidence you hear in court here that she is guilty?

A. Yes.

Mr. Gustafson: Isn't that right?

The Prospective Juror: Yes.

Mr. Gustafson: All right. Then if that is the method by which you would serve as a juror in this case, then you wouldn't act unfairly, would you? You would be acting fairly, would you not?

The Prospective Juror: I would try to act fairly, but I would still have an opinion.

Mr. Gustafson: Yes, nobody is quarrel - - - with your right to have an opinion. I am simply saying would you not, despite that opinion, act fairly and impartially?

The Prospective Juror: I would try to.

Mr. Gustafson: You would try to. Don't you believe you could? This is something that can be done. Couldn't you do it?

The Prospective Juror: Well, I don't know, if I work all night, I might have trouble keeping my mind on what is going on here.

Mr. Gustafson: No, we are on a different subject. It isn't the smud-ing of oranges. I am asking about your view of the case here. In other words, it is true, is it not, Mr. Boynton, that you would be able, despite the opinion that

you have about Mrs. Duncan't guilt, to act fairly and impartially upon the evidence submitted to you?

[fol. 119] The Prospective Juror: Yes, I would try to, sir.

Mr. Gustafson: Yes. I submit the juror is not challengeable for cause.

Mr. Sullivan: I'm going to make a little farther inquiry, if I may, your Honor.

The Court: Mr. Boynton, when you first came into the jury box, I asked you a question. Your voice doesn't seem to carry very well. I didn't get your answer. I understood you to say that you couldn't serve on the jury.

The Prospective Juror: That is what I said.

The Court: And I asked why you couldn't serve on the jury.

The Prospective Juror: Because if it gets cold, I have to smudge oranges at night.

The Court: Because what?

The Prospective Juror: I have to smudge oranges at night.

The Court: Because of your work on the orchard?

The Prospective Juror: Yes.

The Court: Isn't there somebody else could do that work?

The Prospective Juror: No, sir, no one but me. If you smudge, you have to fill the pots the next day.

The Court: Well, I think this juror is excused.

The Prospective Juror: Thank you, your Honor.

The Court: Call another name.

[fol. 120] The Clerk: Fred Lee Eads, E-a-d-s.

The Court: Where do you live, Mr. Eads?

The Prospective Juror: El Rio.

The Court: What?

The Prospective Juror: El Rio.

The Court: How long have you lived there?

The Prospective Juror: Oh, a year and a half.

The Court: Where did you live before that?

The Prospective Juror: Camarillo.

The Court: How long have you lived in Ventura County?

The Prospective Juror: All my life.

The Court: Have you ever served on a criminal jury in a criminal case?

The Prospective Juror: No, sir.

The Court: Have you ever served on a jury in any case?
The Prospective Juror: No, sir.
The Court: How old are you?
The Prospective Juror: Twenty-two.
The Court: Twenty-two?
The Prospective Juror: Yes, sir.
The Court: You have been here in attendance on Court all day, have you not?
The Prospective Juror: Yes, sir.
The Court: Do you know of any reason why you couldn't give this defendant a fair and impartial trial?
The Prospective Juror: No, sir.
[fol. 121] The Court: All right, you may inquire.

Mr. Sullivan:

Q. Mr. Eads, may I inquire as to your business or occupation?
A. I am a construction worker, working on construction.
Q. You understand from the Court's statement to the jurors this morning that Mrs. Elizabeth Duncan is charged in this indictment with the offense of murder, do you not?
A. Yes, sir.
Q. Is there anything about the nature of the charge that would cause you to entertain any bias or prejudice against her?
A. No, sir.
Q. Have you or has any member of your family or anyone near and dear to you ever been connected with any law enforcement agency?
A. No, sir.
Q. Have you ever been the victim of any crime of assault or passion?
A. No, sir.
Q. Or anyone near and dear to you ever been such a victim?
A. No, sir.
Q. Or had occasion to be a witness against any person charged with such a crime?
A. No, sir.
[fol. 122] Q. Now, the alleged victim named in this indictment is a woman by the name of Olga Duncan. If the evidence in this case should disclose that Olga Duncan was the

daughter-in-law of Elizabeth Duncan, this defendant, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. If the evidence in this case should disclose that Olga Duncan at the time she met her death was pregnant, would that fact cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. Assuming that certain law enforcement officers would testify as witnesses for the People in this case, would you be apt to give any greater credence to their testimony merely because they happened to be law enforcement officers than you would to that of any other witness?

A. No.

Q. Assuming that Mrs. Duncan should see fit to take the witness stand and become a witness in her own behalf, would you deny her the benefit of her own testimony merely because she happens to be the defendant in this case?

A. No.

[fol. 123] Q. Withdraw that for a moment. Are you married, Mr. Eads?

A. Yes, I am.

Q. And do you have any children?

A. Yes, sir.

Q. Do you subscribe to any of the local papers?

A. Yes, the Oxnard.

Q. Which paper?

A. Press Courier.

Q. Press Courier. That is the Oxnard paper, is it?

A. Yes.

Q. Do you sometimes listen to news broadcasts on the radio?

A. Yes.

Q. And you have a television at home?

A. Yes.

Q. Do you sometimes listen to and see television newscasts?

A. Yes.

Q. Have you ever read anything in the Oxnard papers concerning this particular case?

A. Yes, sir.

Q. And have you heard any radio broadcasts concerning this partjcular case?

A. Yes, sir.

[fol. 124] Q. Have you seen or listened to any TV newscasts concerning this case?

A. No, I don't believe so.

Q. As a result of what you read concerning this case, and the newscasts which you heard over the radio, did you yourself form any opinion concerning the guilt or innocence of Mrs. Duncan?

A. Yes, sir.

Q. Now, the opinion which you formed, was that an opinion that was favorable or unfavorable to Mrs. Duncan?

A. Unfavorable.

Q. Do you still entertain that same opinion?

A. Yes, sir.

Q. And as a result of the opinion which you formed and which you now entertain, you feel that could act fairly and impartially as a trial juror in this case?

Mr. Gustafson: Objected to as incompetent, irrelevant and immaterial.

Mr. Sullivan: Well, I will reframe it.

Q. Despite the fact that you have formed an opinion concerning the guilt or innocence of Mrs. Duncan, do you feel that you could act fairly and impartially as a trial juror in this case?

A. I do not think so, sir.

Q. Well, let's assume that your wife was seated at this counsel table in the same chair that Mrs. Duncan is [fol. 125] occupying this afternoon and that she was charged in this indictment with the identical offense charged against Mrs. Duncan and you wanted your wife to have a trial before a jury of 12 men and women who are unbiased and unprejudiced and would act absolutely fairly and impartially in the mater. Do you feel that she could receive a fair and impartial trial at the hands of a jury composed of men and women of your present frame of mind.

A. I don't think so?

Q. You wouldn't want to submit her case to such a jury, is that it?

A. No.

Q. That is because you don't think she could get a fair trial, is that right?

A. That is right.

Mr. Sullivan: We will challenge for cause.

Mr. Gustafson: Mr. Eads, you mean then that simply you read something in the newspapers and possibly discussed it with others and formed an opinion based on that, that Mrs. Duncan was guilty that you would refuse to give her the benefit of the presumption of innocence which the judge will tell you that you must give her?

The Prospective Juror: Say that again. I don't get that.

Mr. Gustafson: Do you mean to tell me that simply because you formed an opinion from what you read in the [fol. 126] newspapers, that you will not follow judge Blackstock's instruction that you must give to Mrs. Duncan the benefit of the presumption of innocence until she is proven guilty?

The Prospective Juror: I would follow the instructions and do the best I could but it wouldn't be my full idea of the truth.

Mr. Gustafson: Well, I don't quite understand that, Mr. Eads. Either you would follow it or you wouldn't. Now, if Judge Blackstock should tell you that every defendant in a criminal case is entitled to a presumption that either he or she is innocent, until the prosecution proves they are guilty beyond a reasonable doubt, do you mean to say that you couldn't follow that instruction, that you wouldn't give Mrs. Duncan the benefit of that law?

The Prospective Juror: I would follow it, yes.

Mr. Gustafson: You would?

The Prospective Juror: Yes.

Mr. Gustafson: All right. Would you also follow Judge Blackstock's instruction that you must decide the case on the basis of the evidence presented to you here in court and not on the basis of anything that you may have read in the newspapers before this time or anything that you may read in the newspapers during the trial or anything that you have heard on the radio or anything that your neighbors or your wife said? Would you follow that instruction?

The Prospective Juror: Yes.

[fol. 127] Mr. Gustafson: All right. If you would follow the instruction and give to the defendant the benefit of the

presumption of innocence until she is proven guilty and if you would decide the case on the evidence and on the law as given to you by Judge Blackstock, in what way do you feel that you couldn't act fairly and impartially?

The Prospective Juror: Because I have in mind what I would think. I don't think that it would be right. I could not do it fairly.

Mr. Gustafson: Well, Mr. Eads, if you were told that you can, that it is possible, that is, for a person to act fairly and impartially, notwithstanding the fact that he has an opinion of guilt, do you feel that you as a particular individual couldn't do that?

The Prospective Juror: Yes.

Mr. Gustafson: In other words, even though some people could act fairly and impartially, despite the fact that they have an opinion, you couldn't?

The Prospective Juror: That is right.

Mr. Gustafson: In other words, it would be sort as if you had read in the newspapers that Mr. "X" is a better fighter than Mr. "Y", so therefore if you were called as a judge or referee in that fight, you could not act fairly and impartially because you already had an opinion as to who was the better on-?

The Prospective Juror: Yes.

[fol. 128] Mr. Gustafson: You are unable to set aside and decide the case from what you see and hear in court or, if it were a boxing match, from what you see or hear in the ring?

The Prospective Juror: That is right.

Mr. Gustafson: You are incapable of doing that?

The Prospective Juror: Yes.

The Court: All right, the challenge is allowed. Call another name. You are excused.

(The prospective juror was excused.)

The Clerk: Paul G. Gosney—G-o-s-n-e-y.

The Court: Mr. Gosney—

Mr. Gustafson: Your Honor, may we have a short recess at this time?

The Court: All right. All right, the court is about to take a brief recess. All of you, you don't need to remain in the courtroom but remain subject to the call of the bailiff. We will take a recess for a few minutes.

(Recess.)

The Court: Gentlemen, you have stipulated that Charles Borse may be excused. Is that correct?

Mr. Sullivan: That is correct, Your Honor.

Mr. Gustafson: That is correct, Your Honor.

The Court: All right, Mr. Charles Borse is excused.

You have been here all day, have you?

The Prospective Juror: Yes.

[fol. 129] The Court: You have heard what has been said here?

The Prospective Juror: Yes.

The Court: You know generally what the case is all about?

The Prospective Juror: Yes.

The Court: All right. You may inquire.

Mr. Sullivan: Thank you, Your Honor.

Q. Mr. Gosney, may I inquire as to your business or occupation, please?

A. I'm a sign advertiser.

Q. I'm sorry.

A. I'm a sign advertiser.

The Court: What did he say he is?

The Reporter: He is a sign advertiser.

Mr. Sullivan:

Q. Have you had any previous experience as a trial juror in criminal cases?

A. No.

Q. You understand from what the Court told the prospective jurors this morning, that Mrs. Duncan is charged in this indictment with the offense of murder?

A. Yes, sir.

Q. Is there anything about the nature of that offense that would cause you to entertain any bias or prejudice against her?

A. No.

Q. The alleged victim of this alleged murder is one Olga [fol. 130] Duncan. Now, if the evidence in this case should disclose that Olga Duncan was the daughter-in-law of Elizabeth Duncan, this defendant, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. If the evidence in this case should disclose that at the time Olga Duncan met her death, she was then pregnant, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. Have you ever been or anyone near and dear to you connected in any manner with any law enforcement agency?

A. No, sir.

Q. Have you or has anyone near and dear to you ever been the victim of any crime of assault or passion?

A. (The prospective juror shook his head negatively.)

Q. Or ever had occasion to be a witness against a person charged with such a crime?

A. Yes, sir.

Q. Was that a crime of assault?

A. I think perhaps there are several.

Q. I'm sorry?

A. There are several.

Q. Several. And this person that was a witness, [fol. 131] was that yourself?

A. It was my son-in-law.

Q. Your son-in-law. Well, would the fact that your-in-law at some time or other was called upon to testify against some person in some criminal proceedings, I take it that it was, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. In other words, that would not have any tendency one way or the other to influence your verdict in this case, is that right?

A. That is right.

Q. You heard the court say to the prospective jurors that Mrs. Duncan is presumed to be innocent of the charge contained in this indictment, did you not?

A. (The prospective juror nodded affirmatively.)

Q. And you give her the benefit of that presumption of the law?

A. Yes, sir.

Q. And if you are accepted as a juror in this case, I take it then that you would require the prosecution to prove to

your satisfaction, to a moral certainty and beyond a reasonable doubt, her guilt of this offense?

A. Yes, sir.

Q. So long as you personally entertain a reasonable doubt [fol. 132] as to her guilt, you wouldn't hesitate to resolve in her favor, would you?

A. That is right.

Q. Now, if any law enforcement officers are called as witnesses in this case, would you be apt to give any greater credence to their testimony merely because they happen to be law enforcement officers, than you would to that of any other witness?

A. No, sir.

Q. And if Mrs. Duncan should see fit to take the witness stand and testify as a witness in her own behalf, would you deny her the benefit of her own testimony, merely she happens to be the defendant in this case?

A. No, sir.

Q. Do you subscribe to any newspapers?

A. Yes, I do.

Q. And to what newspapers do you subscribe?

A. The Oxnard paper and the Times, the L.A. Times.

Q. The Los Angeles Times and the Oxnard—is that the Press Courier? Is that what they call it?

A. (The prospective juror nodded affirmatively.)

Q. Do you sometimes listen to news broadcasts on the radio?

A. Yes, I do.

Q. You sometimes listen to the local broadcasting station; that is, the one located here in Ventura? You listen [fol. 133] to the news broadcasts on that station, is that right.

A. Right.

Q. And do you have a television set at home?

A. Yes.

Q. Do you sometimes see and hear newscasts on television?

A. (The prospective juror nodded affirmatively.)

Q. Now——

The Court: Wait a minute. Mr. Gosney, is it Mr. Gosney?

The Prospective Juror: Right.

The Court: Please speak up so that you can be heard.

The court reporter can't get the nod of your head unless he happens to be looking at you.

The Prospective Juror: All right, sir.

Mr. Sullivan:

Q. Now, Mr. Gosney, have you in the past read anything about this particular case?

A. Yes, sir.

Q. And have you, in addition to what you read, heard any news broadcast by way of radio, concerning this particular case?

A. No, sir.

Q. Have you see- and heard any television newscasts concerning this particular case?

A. No, sir.

Q. Well, in addition to what you have read concerning [fol. 134] this particular case, have you discussed it with anyone?

A. Yes.

Q. Have you discussed it with many people?

A. Possibly six.

Q. I'm sorry.

A. Six people.

Q. About six people?

A. (The prospective juror nodded affirmatively.)

Q. And these people that you discussed it with, did they purport to know anything about the facts concerning this case?

A. No, sir.

Q. Do you know whether or not any of those people might become witnesses in this case?

A. I do not know.

Q. You do not know that. Do you know whether or not the people with whom you discussed it had any personal knowledge concerning the facts in this case?

A. No, sir.

Q. You don't know?

A. No.

Q. Well, as a result of what you have read in the newspapers and the discussions which you had concerning this case with approximately six people, did it cause you to

form or express any opinion concerning the guilt or innocence of Mrs. Duncan?

[fol. 135] A. No, sir.

Q. Not at all?

A. Not at all.

Q. If you are accepted as a juror in this case, do you feel that you could decide the guilt or innocence of Mrs. Duncan solely and exclusively from the evidence as you hear it in this courtroom?

A. I do?

Q. And you feel that you would and not allow anything that you read or heard concerning this case to influence your verdict one way or the other, is that correct?

A. (The prospective juror nodded affirmatively.)

Q. Do you know of any reason why you could not be a fair and impartial juror in this case?

A. Nothing but economic.

Q. What?

A. Nothing but economics.

Q. You mean some reason personal to yourself as far as your own financial condition is concerned?

A. That is right.

Q. Do you mean if you are required to sit here for some four weeks and try this case as a trial juror, that it would be rather expensive, so far as you are concerned, from a financial point of view?

A. That is right.

Q. Despite that fact, do you think that you could sit [fol. 136] fairly and impartially?

A. I think so.

Q. You think that you might, as the case went on from day to day, that you might be more concerned with the effect it is going to have upon your financial well being, rather than paying close attention to the evidence in this case?

A. I think that is a definite possibility.

Q. And do you think that that to some extent might prevent you from paying strict and close attention to the evidence?

A. I don't believe that it would. I say that is a possibility.

Q. It is a possibility?

A. I do not believe it would.

Q. I'm sorry.

A. I said I do not believe it would.

Q. You do not believe it would, but there is a possibility that it may?

A. Yes.

Q. Do you feel that it would work a hardship on you?

A. Definitely it would.

Q. If you sat here for some four weeks?

A. (The prospective juror nodded affirmatively.)

Q. Well, let's assume that you are accepted as a prospec-
[fol. 137] tive juror on this case and let's assume further that it takes four weeks to try it or even longer. That is an estimate of the length of time this case will take to try. If you had to sit here during this long and protracted trial and the jury would retire to the jury room to try and reach a verdict and you hold a contrary opinion to that of your fellow jurors, and conscientiously hold a contrary opinion, would you be apt to surrender your conscientious opinion and vote with your fellow jurors, for the purpose of arriving at a verdict and getting this case over?

A. No, sir.

Q. You wouldn't do that?

A. No, sir.

Q. And you think that despite the fact that it may work some hardships upon you, that you could nevertheless act fairly and impartially as a trial juror, is that right, Mr. Gosney?

A. Yes.

Mr. Sullivan: Pass for cause.

Mr. Benton, do I pronounce your name correctly?

A. That is correct.

Q. May I ask your business or occupation?

A. I am employed in a gasoline plant.

Q. I am sorry?

A. In a gasoline plant.

Q. Gasoline plant?

[fol. 138] A. That is right.

Q. Are you in business in Ventura County?

A. Yes, sir.

Q. And have you ever had occasion to sit as a trial juror in a criminal case?

A. No, sir.

Q. You understand from what you have heard already in this courtroom, that Mrs. Duncan is charged in this indictment with the offense of murder, do you not?

A. Yes, I understand.

Q. Is there anything about the nature of that charge that would cause you to entertain any bias or prejudice against her?

A. No.

Q. If the evidence in this case should disclose that the alleged victim of this alleged murder was the daughter-in-law of Mrs. Duncan, would that fact cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. Assuming that the evidence in this case should further disclose that at the time Olga Duncan—she being the alleged victim—that at the time she met her death she was then pregnant; would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. Have you or has any member of your family or any- [fol. 139] one near and dear to you, ever been the victim of a crime of assault or passion?

A. No.

Q. Or ever had the occasion to be a witness against any person charged with such a crime?

A. No.

Q. Have you ever been or has anyone near and dear to you connected with any law enforcement agency?

A. Yes.

Q. Was that a relative of yours?

A. Yes.

Q. A close relative of yours?

A. My brother.

Q. Your brother. And is he now connected with some law enforcement agency?

A. Yes.

Q. Is that one of the local law enforcement agencies?

A. No.

Q. Some place out of the County of Los Angeles?

A. Orange County.

Q. Orange County. And in what capacity is he connected with law enforcement agencies?

A. He is a Deputy Sheriff.

Q. Deputy Sheriff. And did he ever discuss any of his cases with you?

[fol. 140] A. No. He doesn't have that type of work. As far as I know, he has never had any cases.

Q. So he has never discussed any?

A. Well, I don't see him very often.

Q. Well, it is possible that some Deputy Sheriffs of Ventura County may testify as witnesses for the people in this case. Would the fact that—you say this is your brother-in-law?

A. Brother.

Q. Would the fact that your brother-in-law is a Deputy Sheriff in another county cause you to give any greater credence to the testimony of a Deputy Sheriff of Ventura County?

A. No, I don't think so.

Q. You say that you don't think so?

A. I will clarify that. No.

Q. All right. The answer is no, then?

A. Yes.

Q. All right. Well, would the fact that a witness happened to be a law enforcement officer cause you to give any greater credence to his testimony, merely because he is a law enforcement officer, than you would that of any other witness?

A. No.

Q. You feel that you could weigh and consider of such a witness by the same standard that you would that of any [fol. 141] other witness, is that right?

A. Yes.

Q. And you understand from what you heard in this courtroom, that Mrs. Duncan is presumed to be innocent of the charge contained in this indictment?

A. Yes.

Q. And that it is the duty of the prosecution to prove her guilt to a moral certainty and beyond a reasonable doubt? You understand that?

A. I understand that.

Q. If you are accepted as a juror in this case, would you require the prosecution to prove to your satisfaction, to a

moral certainty, and beyond a reasonable doubt, the guilt of Mrs. Duncan?

A. Yes.

Q. And if you entertained a reasonable doubt concerning her guilt of the charge contained in this indictment, would you hesitate to resolve that doubt in her favor?

A. No.

Q. Now, Mr. Batten, are you married?

A. Yes, sir.

[fol. 142] Q. And do you have children?

A. No children.

Q. Do you subscribe to any of the local papers?

A. Yes, sir.

Q. What papers do you subscribe to?

A. Ventura Star Free Press.

Q. Do you sometimes listen to news broadcasts on the radio?

A. Occasionally.

Q. Do you occasionally listen to news broadcasts over the local Ventura radio station?

A. Once in a while.

Q. Do you have a television set at home?

A. Yes.

Q. Do you occasionally watch and hear newscasts over television?

A. No.

Q. Well, have you ever read anything concerning this particular case?

A. Yes.

Q. In the local papers?

A. Yes, I have.

Q. Do you read any other paper besides the Ventura paper?

A. L. A. Examiner.

Q. The Los Angeles Examiner?

[fol. 143] A. Yes, sir.

Q. Have you read anything concerning this case in the Los Angeles Examiner?

A. Yes.

Q. In addition to what you read in the newspapers concerning it, have you heard anything about it in the newscasts over the radio?

A. No, I don't believe so.

Q. You have no independent recollection of it as you sit in the jury box today; is that it?

A. No.

Q. Have you discussed this case with anyone?

A. With my wife.

Q. Any other person?

A. Maybe a couple of people.

Q. Well, you feel reasonably sure that you discussed it with a couple of other people besides your wife?

A. That is about it, yes.

Q. You have heard it discussed?

A. Oh, yes.

Q. As a result of what you read concerning this and the discussions that you had with your wife and these other people, did you, yourself, form any opinion concerning the guilt or innocence of Mrs. Duncan?

A. No.

Q. It didn't influence you one way or the other concern-
[fol. 144] ing her guilt or innocence of this charge?

A. Would you rephrase that?

Q. You want me to rephrase it?

A. Yes.

Q. What you read in the newspapers or what you discussed with your wife or heard discussed did not influence you in any way concerning the guilt or innocence of Mrs. Duncan?

A. You mean my own personal opinion?

Q. Yes.

A. No.

Q. And as you sit in the jury box here today, do you have any opinion concerning her guilt or innocence?

A. No.

Q. If you are accepted as a juror in this case, do you feel that you could decide her guilt or innocence solely and exclusively from the evidence as you hear it in this courtroom?

A. Yes, I do.

Q. Would you allow anything that you read in the newspapers in the past or that you heard discussed in the past to influence your verdict one way or the other?

A. No.

Q. If you are accepted as a juror in this case, the court

may instruct you but you are, during the trial of this case, not to read anything in the newspapers concerning it, not [fol. 145] to discuss it with anyone, do you feel that you could follow that admonition of the court?

A. Yes.

Q. And refrain absolutely from reading anything in the newspapers about it?

A. If it was instruction of the court, yes.

Q. Do you know of any reason whatsoever that you could not give to Mrs. Duncan a fair and impartial trial?

A. I know of no reason.

Mr. Sullivan: Thank you.

Mr. Spangler?

A. Right here.

Q. May I inquire as to your business or occupation, Mr. Spangler?

A. Plumbing contractor.

Q. Contractor?

A. Plumbing contractor.

Q. Plumbing. Are you a plumbing contractor in Ventura County here?

A. In Fillmore, yes.

Q. In Fillmore. Have you had any previous experience as a trial juror in criminal cases?

A. No, sir.

Q. You understand, what you have heard said in this courtroom today that Mrs. Duncan is charged in this indictment with the offense of murder?

[fol. 146] A. Yes, sir.

Q. Is there anything about the nature of that charge that would cause you to entertain any bias or prejudice against her?

A. No, sir.

Q. Now, the alleged victim of this alleged murder is one Olga Duncan. If the evidence in this case should disclose that Olga Duncan was the daughter-in-law of Elizabeth Duncan, this defendant, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. If the evidence in this case should further disclose

that at the time Olga Duncan met her death she was then pregnant, would that fact cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. Have you or has any member of your family or anyone near and dear to you ever been the victim of a crime of assault or violence?

A. No, sir.

Q. Or ever had occasion to be a witness against any person charged with a like crime?

A. No, sir.

Q. Have you been or has anyone related to you or near and dear to you connected with any law enforcement agency?

[fol. 147] A. No, sir.

Q. Are you personally acquainted with Mr. Gustafson, the District Attorney of this county?

A. No, sir, I am not.

Q. Are you personally acquainted with any of the deputies in his office or members of his staff?

A. Well, I don't know them. There might be one or two.

Q. There might. Do you know for certain or are you just aren't sure whether you know any of them?

A. Well, I don't know.

Q. I would like to hear that again, please?

A. In connection with the Sheriff's Department I think only one or two.

Q. You know one or two of the deputies in the Sheriff's Department; is that right?

A. Yes.

Q. Are they personal friends of yours?

A. Well, was at one time, yes.

Q. Well, in the event some deputy sheriff should be called as a witness by the People in this case, would you be apt to give any greater credence to his testimony?

A. No, I don't think so.

Q. Because you happen to have some friends in the Sheriff's Office?

A. No.

[fol. 148] Q. Than you would that of any other witness?

A. No.

Q. Would your be apt to give any greater credence to

the testimony of a law enforcement officer just because he happens to be a law enforcement officer than you would that of any other witness?

A. No.

Q. In the event that Mrs. Duncan should take the witness stand and testify as a witness in her own behalf, would you be apt to deny her the benefit of her own testimony merely because she happens to be the defendant in this case?

A. No.

Q. You heard the court when he informed the prospective jurors this morning that Mrs. Duncan is presumed to be innocent of the charges contained in this indictment?

A. That's right.

Q. And if you are accepted as a juror in this case, do you feel that you could afford to her the benefit of that doctrine of the law which presumes her to be innocent of this charge until proven guilty to a moral certainty and beyond a reasonable doubt?

A. Yes, sir.

Q. Now, do you subscribe to any newspapers?

A. The Ventura Free Press, the Los Angeles Examiner and Fillmore Herald.

Q. All three?

[fol. 149] A. Yes.

Q. And have you been subscribing to those three newspapers for the last three or four months, at least?

A. Yes, sir.

Q. Do you sometimes listen to news broadcasts on the radio?

A. I do.

Q. Do you sometimes listen to your local radio broadcasting station; that is, the one located here in Ventura?

A. Yes, sir.

Q. Do you listen to news broadcasts occasionally on that station?

A. Yes.

Q. Is that right?

A. Yes.

Q. Do you have a television set at home?

A. Yes, sir.

Q. Do you occasionally see and hear newscasts on television programs?

A. Yes, sir.

Q. Now, have you read anything concerning this case in the newspapers to which you subscribe?

A. Well, very little.

Q. Well, have you read some?

A. Some, yes.

[fol. 150] Q. In all three papers?

A. Well, I think mostly in the Star Free Press.

Q. Mostly in the Ventura Free Press?

A. Yes.

Q. And do you recall that for a time there were articles in the Ventura Free Press almost daily concerning this case, don't you?

A. Yes.

Q. Did you read those articles?

A. Not every one.

Q. You read some of them?

A. Some of them.

Q. Did you read any of the articles which purported to report the testimony taken before the grand jury in this case?

A. Not that I recall.

Q. Did you read any articles in the Ventura Free Press which purportedly reported any statements given out by Mr. Gustafson, the District Attorney?

A. Not that I remember now.

Q. You have no independent recollection?

A. No.

Q. Of that as you sit in the jury box today; is that right?

A. That's right.

Q. Did you tell me that you didn't hear any radio [fol. 151] broadcasts concerning this case?

A. Very few.

Q. You heard some?

A. Some, yes.

Q. Did you hear any newscasts on television concerning this case?

A. Very few.

Q. Some?

A. Some. My business takes up most of my time. I don't have much time.

Q. Keep your voice up so the reporter can get you.

A. There's something wrong with my throat. I guess it's nerves.

Q. Well, now, in addition to what you read and heard by way of radio or television, did you discuss this case with anyone?

A. No, I don't think so, not that I know of.

Q. You say you don't think so?

A. No, not that I can remember.

Q. You have no independent recollection?

A. No.

Q. Of discussing it with anyone; is that correct?

A. That's right.

Q. Let's see, I believe you said you lived in Fillmore?

A. Fillmore; yes.

[fol. 152] Q. How large a town is Fillmore?

A. Oh, about 8,000, I guess.

Q. Have you lived there for some time?

A. Well, yes, about 50 years, I guess.

Q. I take it that you have many friends in Fillmore?

A. I hope so.

Q. I think you must, being 50 years a resident there. Well, you don't recall any of these friends of yours ever mentioning this case to you?

A. No. As I say, I'm too busy with my business and I don't have a store downtown. It is at my home. I don't contact everybody.

Q. Do you belong to fraternal organizations?

A. Yes, when I get out and go. The American Legion and——

Q. Do you attend regularly the Legion meetings?

A. No, sir, I don't.

Q. So that you don't have much time to talk to your many friends in Fillmore?

A. No, I don't, only in a business way.

Q. Pardon?

A. Just in a business way.

Q. In the business. Are you married?

A. Yes.

Q. Do you have children?

[fol. 153] A. Yes. Two.

Q. Are they grown children?

A. Grown and married.

Q. Well, in any event, from what you read about this case did it cause you to form any opinion regarding the guilt or innocence of Mrs. Duncan?

A. None whatever.

Q. At no time?

A. At no time.

Q. (Continuing) Did you form any opinion of your own concerning her guilt or innocence; is that right?

A. No, sir, that's right.

Q. Well, if you are accepted as a trial juror in this case, do you feel that you could decide the guilt or innocence of Mrs. Duncan solely and exclusively from the evidence as you hear it in this courtroom?

A. I do.

Q. And do you feel that you could do that uninfluenced in any way by what you might have read about this case in the past?

A. That's right.

Q. Do you know of any reason whatsoever that you could not give to Mrs. Duncan a fair and impartial trial?

A. No, sir.

Q. Is Mrs. Spangler still living?

A. I beg your pardon?

[fol. 154] Q. Your wife, is she still living?

A. Yes.

Q. Let's assume that your wife was in court here today charged with the identical offense charged in this indictment against Mrs. Duncan; she was going on trial here today for that offense, and you wanted her to be tried at the hands of 12 men and women who would be absolutely fair and impartial, unbiased and unprejudiced in any way whatsoever. Do you feel that she could receive a fair and impartial trial at the hands of 12 men and women of your present frame of mind?

A. Yes, sir.

Mr. Sullivan: All right. Thank you, Mr. Spangler. We will pass Mr. Spangler for cause, Your Honor.

Q. Mr. Hood, may I inquire as to your business or occupation?

A. I am a service man for the Edison Company.
Q. A service man for Edison?
A. Yes.
Q. Do you live in Ventura, Mr. Hood?
A. Suburb.
Q. A suburb of Ventura?
A. Yes.
Q. And approximately how long have you lived here?
A. Six years.
Q. Six years. Have you ever had occasion to serve [fol. 155] as trial juror in a criminal case before?
A. No, sir.
Q. You also know by now the nature of the charge contained in this indictment, do you not?
A. Yes, sir.
Q. Is there anything about the nature of that charge that would cause you to entertain any bias or prejudice against Mrs. Duncan?
A. No.
Q. Are you married, Mr. Hood?
A. Yes.
Q. And living with your wife?
A. Yes.
Q. Do you have any children?
A. Two.
Q. Two children. Mr. Hood, the alleged victim named in this indictment; that is, the alleged victim of this alleged murder is a woman who was named Olga Duncan. If the evidence in this case should disclose that Olga Duncan was the daughter-in-law of Elizabeth Duncan, would that fact cause you to entertain any bias or prejudice against Mrs. Duncan?
A. No.
Q. Now, if the evidence should further disclose that at the time Olga Duncan met her death she was pregnant, would that cause you to entertain any bias or prejudice [fol. 156] against Mrs. Duncan?
A. No.
[fol. 157] Q. Have you or has any member of your family or anyone near and dear to you ever been the victim of a crime of assault or passion?
A. No.

Q. Or ever had occasion to be a witness against any person charged with such a crime?

A. No, sir.

Q. Have you ever been or is anyone near and dear to you connected in any manner with any law enforcement agency in this State or elsewhere?

A. No, sir.

Q. Are you personally acquainted with Mr. Gustafson, the District Attorney in this County?

A. No.

Q. Are you acquainted with any of his deputies or members of his staff?

A. No.

Q. In the event that one or more Deputy Sheriffs or other law enforcement officers should testify as witnesses for the People in this case, would you be apt to give any greater credence to their testimony merely because they happened to be law enforcement officers, than you would that of any other witness?

A. Not at all.

Q. Now, in the event that Mrs. Duncan should see fit to take the witness stand and testify as a witness in her own [fol. 158] behalf, would you be apt to deny her the benefit of her own testimony merely because she happens to be the defendant in this case?

A. No.

Q. You heard His Honor when he informed the members of this prospective jury this morning, that Mrs. Duncan is presumed to be innocent of this offense?

A. Yes, sir.

Q. If you are accepted as a juror in this case, do you feel that you could give her the benefit of that presumption of the law?

A. I do.

Q. And I take it then that if you are accepted as a juror in this case, that you would require the prosecution to prove to your satisfaction, to a moral certainty and beyond a reasonable doubt, the guilt of Mrs. Duncan is that right?

A. Yes

Q. And as long as you yourself entertained a reasonable doubt as to her guilt, would you hesitate to resolve that doubt in her favor and vote for a verdict of not guilty?

A. Not at all.

Q. Now, this trial may prove to be a protracted one. It might last four weeks. It might last longer. Let's assume that you are sitting as a juror in this case and you served four, five or six weeks in the jury box. The jury retired to the jury room to deliberate on the guilt or innocence of Mrs. [fol. 159] Duncan. And let's assume that you yourself entertain a reasonable doubt as to her guilt, but your fellow jurors entertain a contrary opinion. Would you be apt to surrender your opinion solely for the purpose of reaching a verdict and getting this case over with?

A. Absolutely no.

Q. In other words, as long as you did entertain that reasonable doubt, you wouldn't hesitate to vote for an acquittal, regardless of what your fellow jurors might do, is that right?

A. That is right.

Q. Now, Mr. Hood, do you subscribe to any newspapers?

A. Ventura Star-Free Press.

Q. And any other papers?

A. No, sir.

Q. Do you read any of the other newspapers?

A. Occasionally the Examiner, Los Angeles.

Q. Ocassionally you read the Examiner?

A. (The prospective juror nodded affirmatively.)

Q. I take it that sometimes you buy that on the Sunday edition?

A. Every other Sunday.

Q. And in addition to that, do you have a radio at home?

A. Yes, sir.

Q. Do you sometimes listen to news broadcasts on the radio?

[fol. 160] Q. Well, sometimes?

A. There has been an occasion, yes.

Q. Do you also have a television set?

A. Yes, sir.

Q. And do you sometimes listen to newscasts on television?

A. Yes, sir.

Q. Have you been subscribing to the Ventura newspaper for, let's say, the last three or four months?

A. Two months.

Q. Two months?
A. Yes, sir.
Q. Say from the early part of December?
A. Approximately, yes.
Q. Have you read anything about this case in the newspapers?
A. Yes, sir.
Q. Have you heard any newscasts on the radio concerning this case?
A. Not to my knowledge.
Q. You have no independent recollection of that?
A. No, sir.
Q. Have you seen and heard any television newscasts concerning this particular case?
A. No.
Q. Have you discussed this case with anyone?
[fol. 161] A. It has been discussed with me, yes.
Q. Among your fellow workers?
A. Yes.
Q. And in addition to that, have you discussed it with some of your friends and acquaintances?
A. Very few.
Q. Well, with some?
A. With some.
Q. And did you hear it discussed among other people?
A. Occasionally, yes.
Q. Well, as a result of what you read or heard about this case or discussed with other persons, did you yourself form any opinion concerning the guilt or innocence of Mrs Duncan?
A. No, sir.
Q. So that as you sit on the witness stand here today, you have no opinion whatsoever regarding the guilt or innocence of Mrs. Duncan, is that right?
A. No, sir.
Q. Your answer is Yes, is that right?
A. Yes. That is right.
Q. Well, if you are accepted as a juror in this case, do you feel that you can decide the guilt or innocence of Mrs. Duncan solely and exclusively from the evidence as you hear it in this courtroom?
A. Yes.

[fol. 162] Q. You feel that you can do that and not allow your verdict to be influenced one way or the other by what you read in the past or heard discussed in the past, is that right?

A. That is right.

Q. Well, let's assume that your wife was on trial here today in the place of Mrs. Duncan, charged with the identical offense charged against her in this indictment, and you wanted your wife to be tried before a jury of 12 men and women who would be absolutely fair and impartial, unbiased and unprejudiced. Do you feel that she could receive a fair and impartial trial at the hands of 12 men and women of your present frame of mind?

A. Yes.

Q. Do you know of any reason why you could not give to Mrs. Duncan a fair and impartial trial?

A. No.

Mr. Sullivan: Thank you. Mr. Hood.

Q. Mr. King.

A. Yes.

Q. May I inquire as to your business or profession?

A. What?

Q. I am sorry. Your business or occupation?

A. Excavating contractor.

Q. Are you engaged in business in Ventura County?

A. Yes.

Q. Let's see. You reside in—

[fol. 163] A. Piru.

Q. Piru?

A. Yes.

Q. I would have mispronounced the name if you hadn't mentioned it for me. Is your business located in Piru?

A. Yes.

Q. And have you resided there for some time?

A. Thirty-eight years, with four years out for the Army.

Q. Are you married?

A. Yes.

Q. And you have a family and children?

A. Five.

Q. Mr. King, you understand from what you heard so far

in this courtroom today, the nature of the charge contained in the indictment against Mrs. Duncan, do you not?

A. Yes, sir.

Q. And it there anything about the nature of that charge that would cause you to entertain any bias or prejudice against her?

A. Not the charge, no.

Q. Not the charge itself. Something else that might?

A. What I have read and heard.

Q. Pardon?

A. What I have read and heard.

Q. Well, let's come to that before we go into anything [fol. 164] else. I take it from your answer, that you have read and heard something about this case, is that right?

A. Yes.

Q. Is that something that you read in some of the local newspapers?

A. The Star Free-Press and Los Angeles papers, both.

Q. I see. In addition to that, have you heard radio newscasts concerning this case?

A. Yes. I believe so.

Q. And do you recall having read any of the newspaper articles which purported to report the testimony of the witnesses who appeared before the Grand Jury in this matter?

A. Yes.

Q. You read that?

A. Yes.

Q. And do you recall having read any statements purportedly made by Mr. Gustafson concerning this case?

A. Yes.

Q. Additionally, have you seen and listened to newscasts on television concerning this case?

A. Yes.

Q. And you indicated that you had also discussed it with other persons, is that correct?

A. Yes.

Q. Have you discussed it with many people?

A. I suppose. I couldn't say how many, but a number of [fol. 165] them.

Q. Quite a few?

A. Yes, quite a few.

Q. And these people with whom you discussed this case, did they purport to have any personal knowledge concerning the facts in this case?

A. Well, I couldn't say. One of them was a Lieutenant on the Sheriff's Department and I don't know whether he had or not.

Q. So you don't know? You don't know whether the people with whom you discussed this case had any personal knowledge of the facts or not, do you?

A. No.

Q. Do you know whether any of the persons with whom you discussed this case are to be called as witnesses in this case?

A. I have no idea.

Q. You don't know that either. Well, as a result of what you read and what you discussed with other people or heard other persons discuss, did you yourself form an opinion respecting the guilt or innocence of Mrs. Duncan?

A. Yes.

Q. And was that opinion which you formed favorable or unfavorable to Mrs. Duncan?

A. It was unfavorable.

Q. And do you still entertain that opinion?

[fol. 166] A. Yes.

Q. And as a result of the opinion which you formed and which you now entertain concerning the guilt or innocence of Mrs. Duncan, do you feel that you can act fairly and impartially as a juror in this case?

Mr. Gustafson: Object to that as irrelevant and immaterial.

Mr. Sullivan: Well, despite—I will reframe it. I will reframe it, your Honor.

Q. Despite the fact that you have formed an opinion concerning the guilt or innocence of Mrs. Duncan and that you still entertain that same opinion, do you feel that you can act fairly and impartially as a juror in this case?

A. Well, we will put it this way, that when I have my mind made up, it takes some doing to change it.

Q. In other words, you are pretty opinionated, is that right?

A. I am opinionated. We will face it.

Q. And with the opinion which you now have, I take that we of the defense would have some hurdles to overcome, is that right?

A. Yes, sir.

Q. Well, let's say that your wife was on trial for this offense, and God forbid that she ever will, but let's assume for the purpose of my question, that she is sitting in this chair at the counsel table here today, charged with the [fol. 167] identical offense that is charged against Mrs. Duncan, and you wanted your wife to have a trial at the hands of 12 men and women who would be absolutely fair and impartial, unbiased and unprejudiced in any way whatsoever. Do you feel that she should get an absolutely fair and impartial trial at the hands of 12 men and women of your present frame of mind?

A. Well, absolutely not.

Mr. Sullivan: We will challenge this juror for cause.

Mr. Gustafson: Mr. King, I think you said that when you make up your mind, it takes some doing to change it?

The Prospective Juror: Yes. I am opinionated, yes.

Mr. Gustafson: And you say that you have some opinions concerning Mrs. Duncan's case that is unfavorable to her?

The Prospective Juror: Yes.

Mr. Gustafson: You say now that if Judge Blackstock tells you that Mrs. Duncan is presumed to be innocent until I present some evidence convincing you beyond a reasonable doubt that she is guilty, that if I produce no evidence whatsoever, so that there is no evidence whatever to change your mind, that you will walk out in the jury room then and find her guilty?

The Prospective Juror: Well, you already presented your evidence.

Mr. Gustafson: Well, I am saying, assume that I have no evidence whatever that I present to you, when I present the case—in other words, I fall down completely and I don't present any evidence against her—are you going to go and vote her guilty, despite the Judge's telling you that [fol. 168] you must consider her innocent until the evidence is before you, proving her guilty beyond a reasonable doubt?

The Prospective Juror: Well, let's put it this way: I have heard a good deal of your evidence in the papers and

television, and if you presented no evidence, you still have presented evidence that I know, and I cannot forget.

Mr. Gustafson: Well, now, suppose Judge Blackstock tells you that what you read in the papers and what you heard in the television or on the radio is not evidence, that the only evidence in the case is what you hear and see in this courtroom——

The Prospective Juror: Well, I understand that, but a person still cannot completely disregard what he has seen and heard.

Mr. Gustafson: So that you are telling me, Mr. King, that if I presented no evidence whatever here, then you would nevertheless, by reason of what you read in the newspapers or heard over the radio, vote Mrs. Duncan guilty?

The Prospective Juror: I couldn't say unequivocally, no, under those conditions.

Mr. Gustafson: But what I am trying to get at, I am trying to find out if you will follow Judge Blackstock's directions in what you are to do in performing your duty as a juror in sitting on the jury. I am trying to ascertain, first of all, whether you will follow all his instructions.

[fol. 169] The Prospective Juror: In a court of law, I presume that you attempt to follow all the instructions that are given to you. It is not always possible.

Mr. Gustafson: You think that it is not possible for you to follow what Judge Blackstock tells you is the law?

The Prospective Juror: What Judge Blackstock tells me is the law, I will have to go on as right. But what I think, nobody in the world can control what I think.

Mr. Gustafson: No. But I am just trying to ascertain, if Judge Blackstock tells you that you must decide this case not on anything that you have read in the newspapers or will read, and not on anything that you have heard on the radio or will hear, but solely on the basis of the evidence presented here in court, would you follow his instructions?

The Prospective Juror: I don't believe that I could.

Mr. Gustafson: You don't believe that you could. All right. I don't object to counsel's challenge for cause for this juror.

The Court: All right. the challenge is allowed. You are excused.

(The prospective juror was excused.)

The Court: Call another name.

The Clerk: Loretto, L-o-r-e-t-t-o, E. Kennedy, K-e-n-n-e-d-y, Loretto E. Kennedy.

[fol. 170] The Court: Is it Miss or Mrs. Kennedy?

The Prospective Juror: Mrs. Kennedy.

The Court: Mrs.?

The Prospective Juror: Yes.

The Court: Where do you live?

The Prospective Juror: In Oxnard.

The Court: How long have you lived there?

The Prospective Juror: Since 1943.

The Court: Have you ever served on a jury in a criminal case?

The Prospective Juror: Not a criminal case.

The Court: You never did.

Gentlemen, we started at a quarter to 2:00 and it is half past 4:00. Do you want to quit now or do you want to go longer?

Mr. Sullivan: I would appreciate it if we could adjourn at this time, your Honor.

The Court: In Los Angeles they adjourn at 4:00, don't they?

Mr. Sullivan: That's right, your Honor.

Mr. Gustafson: Well, I would prefer to go to a quarter to 5:00, but I don't want to inconvenience counsel.

Mr. Sullivan: I would appreciate an adjournment at this time, if we can have it.

The Court: It is half past 4:00 o'clock. That is enough, anyway, even if you started at 2:00.

Mr. Sullivan: That's right.

[fol. 171] The Court: You may change your mind about wanting to go too long before this case is over.

Ladies and gentlemen of the prospective jury, Court is about to adjourn until tomorrow morning at 10:00 o'clock. Be sure and all be here at that time.

Mr. Gustafson: Your Honor, may I ask whether I may take up a matter with the Court in the chambers about five minutes to 10:00 tomorrow, with counsel and defendant present?

Mr. Sullivan: Certainly.

The Court: That is, after I excuse this jury.

Mr. Gustafson: Well, either this afternoon or tomorrow morning.

The Court: That is, after I excuse the prospective jury.

Mr. Gustafson: Yes.

The Court: You don't mean that I need to keep them here?

Mr. Gustafson: No, I meant either tomorrow morning at five minutes to 10:00 before they arrive or this evening, either o·

The Court: Well, suit yourself.

Mr. Gustafson: Five to 10:00 tomorrow?

Mr. Sullivan: Yes, that is all right.

Mr. Gustafson: Five to 10:00 tomorrow.

The Court: Yes, right.

I am not required to admonish you at this time, but it will be better if you don't discuss this case among yourselves or with anyone else, and after we have selected a [fol. 172] jury, why there is a further admonition. You are excused until tomorrow morning at 10:00 o'clock.

[fol. 173] Ventura, California, February 17, 1959; 9:55 o'clock A.M.

COLLOQUY RE TAKING OF PHOTOGRAPHS

(The following proceedings were had in the Judge's chambers, with the Court, counsel, and defendant present, and outside the hearing of the prospective jury:)

Mr. Gustafson: Your Honor, I asked for this conference in chambers with the defendant present and the defense counsel present, for two purposes, the first of which is with respect to the taking of pictures in the courtroom. I noticed yesterday there were photographers who were taking pictures during the process of selecting the jurors. I could hear cameras clicking and I could hear movie cameras making a whirring sound, and I respectfully ask the Court to forbid and preclude the taking of any pictures during the time that court is in session, unless both the defendant herself and her counsel expressly agree that that be permitted.

Mr. Sullivan: Well, I have no objection and I see no reason why the present order of court should not stand;

that is, your Honor has already informed the newspaper photographers there were to be no flashbulbs taken during the court proceeding. I realize that that is disturbing.

The Court: No flash lights, and they are not to take the Judge or the bench.

Mr. Gustafson: You have no objection, Mrs. Duncan?

[fol. 174] The Defendant: No, absolutely.

Mr. Gustafson: I have no objection, if counsel and the defendant do not have objection.

Mr. Sullivan: There is another thing that I—do you want to rule on that now?

The Court: Well, that is all right. We are just simply agreed on that, so there is no question involved.

COLLOQUY RE BLOOD AND ELECTROENCEPHALOGRAM TESTS

Mr. Sullivan: There is another matter that I would like to take up with the Court while Mr. Gustafson is here. I spoke to Judge Blackstock about this Friday, Mr. Gustafson. I talked to the doctors at Camarillo State Hospital, who were appointed by the Court to examine Mrs. Duncan, and they have indicated to me, both of them, that they would like to have a blood test.

As I understand it, the blood test would have to be made by some laboratory, probably here in Ventura, which is equipped to take the sample and make the blood analysis.

Additionally, they told me that they would like, if possible, to have an electroencephalogram test made. If that test is made, she would have to be taken to—they have the equipment at Camarillo for making that test, and they told me that it would take about an hour to do it.

I will say this frankly to your Honor, that the doctors said that while it was not absolutely necessary, that they felt that it would be advisable, and so I am going to, at this time, request the Court to order both of those tests to be made.

And as I say, I do not know whether there is a laboratory [fol. 175] here in Ventura where an electroencephalogram test can be made. As I understand, there is one in Santa Barbara and one at Camarillo State Hospital.

Mr. Gustafson: Yes. The only one that I know of is at Camarillo State Hospital. With respect to the blood test, there is a Ventura Medical Laboratory, which could do that.

Then, as I understand it, Mr. Sullivan, you want the Court to make that order, but there is no objection, is there, on the part of Mrs. Duncan to these?

The Defendant: No.

Mr. Sullivan: No objection.

Mr. Gustafson: I have no objection.

The Court: All right, take the order as requested.

The Clerk: Can we get a time certain to order the Sheriff to take her to Camarillo?

Mr. Gustafson: To fix a time. Suppose it be left this way, that the order be that she be transported there at such time as Mr. Sullivan informs the Sheriff that she is to be delivered to Camarillo?

Mr. Sullivan: All right. That is satisfactory.

Mr. Gustafson: Are you finished?

Mr. Sullivan: Yes.

Mr. Gustafson: I have one more matter, your Honor, and I am just saying this for the record, because in the event that there is an appeal on this matter and in the event that I have the opportunity to raise the point, I desire to do so, [fol. 176] and consequently I am simply stating this at this time:

Yesterday, Mr. Sullivan asked many jurors a question such as that which he asked, shown on Page 132 of the transcript, as follows: "Now, if any law enforcement officers are called as witnesses in this case, would you be apt to give any greater credence to their testimony merely because they happen to be law enforcement officers than you would to that of any other witness?"

I made objections to that and similar questions. The objections were overruled. I want to state for the record now the basis of my objection is that the question is speculative, asks the juror to indicate the weight that is to be given to testimony of a particular witness, without knowledge of who all the witnesses may be or what they may testify to. The basis for the objection is that it may well be that a person may give greater weight and greater credence to the testimony of a law enforcement officer than any other witness, simply because the law enforcement officer is a law enforcement officer. If, for example, the person, the other witness, with whom the comparison is

made, is a narcotics peddler, it may be perfectly proper for a juror to give more credence to the testimony of a law enforcement officer merely because he is a law enforcement officer than he gives to a witness whose business is peddling narcotics. If the question were a medical question of whether, let's us say, a man had a broken leg, it would be perfectly appropriate to give more credence to the testimony of the doctor simply because he is a doctor, [fol. 177] than to the testimony of some other witness.

I have no objection to the following question which Mr. Sullivan has asked in many instances, and that is whether the jurors would weigh the testimony of a law enforcement officer pursuant to the same rules as govern the testimony of all witnesses, and I think that is the appropriate and proper question. However, I do not intend to make any further objection to this question, since I have already made my objection and particularly since at the moment I don't even intend to call any law enforcement officers.

Mr. Sullivan: Well, I don't know whether you will or not. I am assuming that there is the possibility.

The Court: Well, a witness is presumed to tell the truth, isn't he?

Mr. Gustafson: Yes, your Honor.

The Court: Every witness is presumed to tell the truth no matter who he is or what he is.

Mr. Gustafson: That is right.

The Court: All right, I am satisfied with the ruling that I made.

Mr. Sullivan: Thank you, your Honor.

The Clerk: Just one question. This blood test, they can take a sample in the jail?

Mr. Sullivan: Yes, they can take that in a jail, as I understand it.

[fol. 178] The Clerk: But the order was that there would be a sample and she didn't object to it?

Mr. Sullivan: That is right.

The Defendant: Thank you.

Mr. Sullivan: Thank you.

[fol. 179] (The following proceedings were had in open court.)

The Court: These following prospective jurors are excused by stipulation of the attorneys: Paul Donnally, Elmer Hoscheit, Floria LaFrance.

All right, you may proceed.

Voir Dire Examination. (Continued)

Mr. Sullivan:

Q. Let's see, Mrs. Kennedy, I think that you just came into the jury box as we recessed last night; is that correct? May I inquire as to your business or occupation, Mrs. Kennedy.

A. I am unemployed.

Q. I'm sorry?

A. I am unemployed.

Q. Unemployed. Is it Miss or Mrs. Kennedy?

A. Mrs. Kennedy.

Q. And is there a Mr. Kennedy?

A. Yes, there is.

Q. May I inquire as to his business or occupation?

A. He is a service station operator.

Q. Now, Mrs. Kennedy, from what you heard in the courtroom yesterday you understand the nature of the charge contained in this indictment against Mrs. Duncan, do you not?

A. Yes, I do.

Q. Is there anything about the nature of those charges that would cause you to entertain any bias or prejudice [fol. 180] against her?

A. No, there isn't.

Q. Have you or has any member of your family or anyone near and dear to you ever been the victim of a crime of assault or violence of any kind?

A. No, sir.

Q. Or ever had occasion to be a witness against any person charged with any such crime?

A. No, sir.

Q. It may be possible that during the course of this trial certain law enforcement officers may be called as witnesses. If that should occur, would you be apt to give any greater credence to the testimony of a law enforcement officer than you would that of any other witness merely because he happens to be a law enforcement officer?

A. No, sir.

Q. Do you feel that you could weigh and consider the testimony of such a witness by the same standards as you would that of any other witness?

A. Yes, sir.

Q. In the event that Mrs. Duncan should see fit to take the witness stand and testify as a witness in her own behalf, would you be apt to deny her the benefit of her own testimony merely because she happens to be charged with this offense?

A. No, I wouldn't.

[fol. 181] Q. You understand from what you heard in court yesterday that Mrs. Duncan is presumed to be innocent of the offense charged in this indictment, do you not?

A. I understand that.

Q. You further understand that it is the duty of the prosecution to prove to the satisfaction of the jury to a moral certainty and beyond a reasonable doubt her guilt?

A. Yes.

Q. You feel that if you are accepted as a juror in this case, that you would require the prosecution to do that?

A. That's right.

Q. And if after a full and fair consideration of all the evidence in this case, a full discussion of the evidence among your fellow jurors, you, yourself, entertained a reasonable doubt as to her guilt, would you hesitate to resolve that doubt in her favor so long as you entertained a reasonable doubt?

A. I'm afraid I didn't quite understand that.

Q. I'm sorry?

A. I'm afraid I didn't quite understand that question.

Q. Let me reframe the question.

Let's assume that you are accepted as a juror in this case and hear all of the evidence; you heard the instructions on the law as given to you by His Honor; you retired to the [fol 182] jury room to deliberate on the guilt or innocence of Mrs. Duncan, and after a consideration of all of the evidence and after having discussed it among your fellow jurors, weighed the evidence in the light of the instructions as given to you by His Honor, you, yourself, then entertained a reasonable doubt as to her guilt, would you then hesitate to vote for a verdict of not guilty?

A. No.

Q. In other words, so long as you, yourself, entertained a reasonable doubt you would give her the benefit of that doubt, would you not?

A. I would.

Q. And would you do that irrespective of how your fellow jurors may feel about the case so long as you personally entertained that reasonable doubt?

A. Yes, I would.

Q. Now, Mrs. Kennedy, do you subscribe to any newspapers?

A. Yes.

Q. You live in Oxnard, do you not?

A. Yes, sir.

Q. And what papers do you subscribe to?

A. Oxnard Press Courier and Los Angeles Times.

Q. And do you have a radio in the home?

A. Yes, sir.

Q. Do you sometimes listen to the news broadcasts on [fol. 183] the radio?

A. No.

Q. Pardon?

A. No, sir.

Q. Do you have a television set?

A. Yes, sir.

Q. Do you sometimes listen to the newscasters on television programs?

A. Yes.

Q. Well, do you recall whether or not you have read anything about this case in the newspapers?

A. Yes.

Q. Do you recall whether or not in addition to what you read about it you discussed the matter with other people?

A. Yes, sir.

Q. You discussed it with many people?

A. Oh, I would say about eight or 10.

Q. About eight or 10 people. As a result of what you read and what you discussed with other people did you, yourself, form any opinion respecting the guilt or innocence of Mrs. Duncan?

A. No, sir.

Q. In other words, you have never at any time formed

any opinion of your own regarding her guilt or innocence?

[fol. 184] A. No, sir.

Q. And you have never expressed an opinion to any person?

A. I am sure not.

Q. These people that you discussed this case with, do you know whether or not they personally had any knowledge of the facts that they discussed with you?

A. I am sure they didn't.

Q. Do you know whether they did or not?

A. I would say no.

Q. Do you know whether any of those persons are likely to be witnesses in this case?

A. I wouldn't think so.

Q. You say you don't think so. Do you know?

A. No, sir, I don't know.

Q. Let me read you the names of some people here and I want to ask you if you recall whether you know any of these people. Clarence R. Henderson.

A. I was introduced to him on one occasion.

Q. When was that?

A. Oh, I would say two or three years ago.

Q. Have you seen him since then?

A. No, sir, except right in the courtroom.

Q. Do you regard him as a friend of yours?

A. I couldn't say that, no, sir. I was just introduced to the gentleman.

[fol. 185] Q. So I take it then that you have a speaking acquaintance with Mr. Henderson?

A. Just to say good morning.

Q. Let's assume that Mr. Henderson should become a witness in this case. Would you be apt to give any greater credence to his testimony because of the fact that, let's say, you have a speaking acquaintance with him?

A. No, sir.

Q. Than that of any other witness?

(Witness shakes head negatively.)

Q. D. Gordon Johnston.

A. No.

Q. Virgil L. Payton.

A. I know Mr. Payton, but not personally.

Q. Did you ever meet Mr. Payton?
A. Well, I worked in drug stores that he used to shop in.
Q. Have you talked to him or just to pass the time of day?
A. Just passed the time of day.
Q. How long have you known Mr. Payton?
A. I would say three or four years.
Q. Do you regard him as a friend of yours?
A. No, sir.
Q. Just as an acquaintance?
[fol. 186] A. That's right.
Q. Well, let's assume that Mr. Payton should be called as a witness in this case. Would you be apt to give any greater credence to his testimony than you would that of any other witness merely because you have a speaking acquaintance with him and have met him in the drug stores where you have shopped, and so forth?
A. No, sir.
Q. Doreen Corraini, C-o-r-r-a-i-n-i?
A. No.
Q. Sylvia Butler?
A. No, sir.
Q. Hal V. Hammonds, Jr.
A. No, sir.
Q. Do you know Mr. Hammonds is an attorney practicing in this county?
A. I have heard that.
Q. You have never met him?
A. To my knowledge, I never have.
Q. Emma Short.
A. No, sir.
Q. Barbara Reed?
A. No, sir.
Q. Diane Romero?
A. No, sir.
Q. Rudolph Molino Romero?
[fol. 187] A. No, sir.
Q. Mary Ann Dowhower, D-o-w-h-o-w-e-r?
A. No.
Q. Dorothy Barnett.
A. No, sir.
Q. In connection with the articles which you read in the

newspaper concerning this case, did you read any articles that purported to report the testimony of the witnesses who testified before the grand jury?

A. I'm afraid that is another one I don't quite understand.

Q. Well, I understand that some of the local newspapers published in serial form a great portion of the testimony of the witnesses who appeared before the grand jury.

A. Yes.

Q. Do you recall whether or not you read those articles?

A. I did some.

Q. You read some of them?

A. Yes.

Q. You read some of the testimony?

A. Yes, sir.

Q. Do you recall whether or not you read what purported to be the testimony of Luis Moya before the grand jury?

[fol. 188] A. Yes, sir.

[fol. 189] Q. And you recall whether or not you read what purported to be the testimony of Mr. Baldonado before the Grand Jury?

A. Yes, sir.

Q. And when you read that testimony, did that cause you to form any opinion regarding the guilt or innocence of Mrs. Duncan?

A. No, sir.

Q. Did it cause you to form any opinion regarding the guilt or innocence of any person?

A. No, sir.

Q. And in the article which you read, which purported to report the testimony of those two men, you read that they themselves admitted having committed this crime, did you not?

A. I read that.

Q. But that didn't cause you to believe that they were guilty?

Mr. Gustafson: I will object to that, your Honor, as incompetent, irrelevant and immaterial as to what the prospective jurors believe as to the guilt of anyone except as to this defendant.

The Court: Yes. The objection is sustained.

Mr. Sullivan:

Q. Well, let me ask you this question, Mrs. Kennedy: Let's assume that you were on trial here today, charged with the identical offense that is charged in this indictment [fol. 190] against Mrs. Duncan. All you wanted was to have your case tried before a jury of 12 men and women who are absolutely unbiased and unprejudiced and who would render a fair and impartial verdict. Do you feel that you could receive such a trial at the hands of a jury composed of men and women of your present frame of mind?

A. Yes, I do.

Q. Are you acquainted with Mr. Gustafson?

A. No, sir.

Q. Or any of his deputies or members of his staff?

A. To my knowledge, no.

Q. Have you or has any member of your family or anyone near and dear to you ever been connected with any law enforcement agency?

A. Yes, sir, but not in this State.

Q. Well, was that you yourself or some relative?

A. My father.

Q. Your father. And in what capacity was your father connected with law enforcement?

A. He was a Justice of the Peace.

Q. Justice of the Peace?

A. Yes.

Q. That was in another state other than California?

A. Yes.

Q. And as a Justice of the Peace, your father tried, as a judge, from time to time, certain criminal cases?

[fol. 191] A. Yes.

Q. Did you yourself attend some of those?

A. No.

Q. Well, the mere fact that your father was at one time engaged as a Justice of the Peace, would that in and of itself cause you to give any greater credence to the testimony of a law enforcement officer than you would that of any other witness?

A. No, sir.

Q. Do you know of any reason why you could not give to Mrs. Duncan a fair and impartial trial?

A. No, sir.

Mr. Sullivan: Thank you.

Q. Mr. Metcalf?

A. Yes.

Q. May I inquire as to your business or occupation?

A. I am a motor truck dealer, salesman.

Q. Are you engaged in business in Ventura County?

A. Yes.

Q. Have you resided in Ventura County for some years?

A. Twenty-nine years.

Q. Did you ever have occasion to sell any of your products to any of the departments of the County of Los Angeles—I mean Ventura?

A. About two occasions, yes, sir.

Q. Did you have any business dealings with the District [fol. 192] Attorney's office or any member of his staff?

A. No.

Q. You also understand from what you have already heard said in this courtroom, that this indictment charges Mrs. Duncan with the murder of one Olga Duncan, do you not?

A. Yes.

Q. Is there anything about the nature of those charges that would cause you to entertain any bias or prejudice against her?

A. No.

Q. Now, if the evidence in this case should disclose that Olga Duncan, the alleged victim of this alleged murder, was the daughter-in-law of Mrs. Duncan, would that cause you to entertain any bias or prejudice against her?

A. No.

Q. Assuming that the evidence would further show that at the time Olga Duncan met her death, that she was then pregnant, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. Have you or has any member of your family or anyone near and dear to you ever been connected with any law enforcement agency?

A. Yes.

Q. Was that you yourself or—

A. Yes.

[fol. 193] Q. And in what capacity, may I inquire?

A. Well, it is kind of a Sheriff's Auxiliary. It is an airplane group connected with search and rescue.

Q. Is that the Ventura County Sheriff's office?

A. Yes.

Q. Sort of an auxiliary group, was it?

A. Yes.

Q. In connection with your work with that group, did you come in contact with many of the men in the Sheriff's office?

A. Not many, just mainly one that headed it up.

Q. Well, let's assume that some Deputy Sheriffs of this County should become witnesses for the People in this case. Would the fact that you had been engaged in this activity that you told us about, cause you to give any greater credence to the testimony of such a witness merely because you happened to be connected with that particular group?

A. No, sir.

Q. In other words, you feel that you could weigh and consider the testimony of a Deputy Sheriff by the same standards as you would that of any other witness?

A. I do.

Q. Well, let's assume that Mrs. Duncan should see fit to take the witness stand and testify as a witness in her own behalf. Would you be apt to deny to her the benefit of her own testimony merely because she happens to be the [fol. 194] defendant in this case?

A. No, sir.

Q. You understand from what you have already heard in this courtroom, that she is presumed to be innocent of this offense, do you not?

A. Yes.

Q. Do you feel that if you are accepted as a trial juror in this case that you could give her the benefit of that presumption?

A. I do.

Q. Do you feel that if you are accepted as a juror in this case, that you would require the prosecution to prove to your satisfaction, to a moral certainty and beyond a reasonable doubt, her guilt?

A. I would.

Q. And if after a full and fair consideration of all of

the evidence in this case and weighing it in the light of all the instructions that will be given to you by the Court, you then entertain a reasonable doubt as to her guilt, would you hesitate to resolve that doubt in her favor?

A. Well, I would give her the benefit of the doubt.

Q. Would there be any hesitancy on your part in giving her the benefit of the doubt?

A. No.

Q. Do you subscribe to any of the local papers?

A. Oxnard Press-Courier and the Los Angeles Times.

[fol. 195] Q. Do you sometimes listen to news broadcasts over the radio?

A. Not radio.

Q. Not what?

A. Not radio.

Q. Not radio?

A. Yes.

Q. Do you sometimes listen to newscasts over television?

A. Yes.

Q. Have you read anything about this case?

A. Yes.

Q. You read articles about it in the Oxnard Co[illegible]

A. Yes.

Q. And also in the Los Angeles Times, did I hear you say?

A. Yes.

Q. In both of those cases?

A. No, just the Oxnard Courier. I never read the Times paper.

Q. Did you hear any news broadcasts concerning this case over the television?

A. Yes, I have heard it mentioned over television.

Q. In those newspaper articles which you read, did you read any articles which purported to report the testimony of the witnesses that was taken before the Grand Jury?

[fol. 196] A. No, I didn't read those. I was aware that they were in the paper but I didn't take time to read them.

Q. You say that you were aware that they were in the papers?

A. I saw them in the papers and maybe read three or

four items—I mean lines down but I didn't take the time to read all of it. It was quite lengthy.

Q. Do you recall reading any articles in any newspaper which purported to report any statements concerning this case that were purportedly given by Mr. Gustafson, the District Attorney?

A. Well, I wouldn't know whether they were given by Mr. Gustafson or whether they were the newspaper's version of it. I wouldn't know.

Q. I'm merely inquiring as to whether or not the articles purportedly were statements, that they purported to be statements made by the District Attorney.

A. I don't recall any, no.

Q. You don't recall any?

A. No.

Q. Well, in addition to what you read, did you discuss any of the facts or circumstances concerning this case with any persons?

A. Well, yes.

Q. Could you tell us approximately how many?

A. I wouldn't know. I talk to a lot of people every day [fol. 197] and it was brought up quite often. Maybe 15, I would say.

Q. In any of the articles which you read, did you read any article which purported to report a confession of one Luis Moya?

A. I believe there was. I don't recall the exact wording of it but I think I read that Luis Moya had confessed to the crime.

Q. Did you read any article which purported to report a confession of Augustine Baldonado?

A. I don't believe that I did.

Q. Well, as a result of what you read and of the discussions which you had with approximately 15 people, did you yourself form any opinion regarding the guilt or innocence of Mrs. Duncan?

A. No.

Q. Did you ever yourself express any opinion regarding her guilt or innocence?

A. No.

Q. Are you married, Mr. Metcalf?

A. Yes.

Q. And you have a family, children?
A. Yes.

Q. Well, let's assume that your wife, Mrs. Metcalf, was the person seated at the counsel table here today in place of Mrs. Duncan, charged with the identical offense that is charged against her in this indictment, and you wanted your wife to have a trial before a jury of people who were [fol. 198] absolutely unbiased and unprejudiced and whom you felt would return an absolutely fair and impartial verdict. Do you feel that your wife could receive a trial or such a trial at the hands of a jury composed of men and women of your present frame of mind?
A. Yes.

Q. Do you know of any reason whatsoever why you could not give to Mrs. Duncan a fair and impartial trial?
A. No.

Mr. Sullivan: Thank you, Mr. Metcalf.

Q. Mr. Porter?
A. Yes, sir.

Q. May I inquire as to your business or occupation?
A. I work for one of the local gas companies.

Q. You reside here in Ventura, do you not, Mr. Porter?
A. Yes, sir.

Q. And have you resided here for some years?
A. Yes.

Q. May I inquire how long you have resided in Ventura County?
A. Approximately 30 years.

Q. Well, I take it that you also, from what you heard in this courtroom, understand the nature of the charge contained in this indictment, is that not true?
A. I think so.

[fol. 199] Q. Is there anything about the nature of that charge that would cause you to entertain any bias or prejudice against Mrs. Duncan?
A. No.

Q. Have you or has any member of your family or anyone near and dear to you ever been the victim of a crime of assault or violence?
A. No, sir.

Q. Or ever had occasion to be a witness against any person charged with such a crime?

A. No, sir.

Q. Are you personally acquainted with Mr. Gustafson?

A. No, sir.

Q. Or any of his deputies or members of his staff?

A. No, sir, not personally acquainted.

Q. Have you or has any member of your family or anyone near and dear to you ever been connected with any law enforcement agencies?

A. No, sir.

Q. Assuming that the evidence in this case should disclose that the alleged victim, Olga Duncan, was the daughter-in-law of Elizabeth Duncan, this defendant, would that fact cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. Well, assume that the evidence should further disclose [fol. 200] that at the time Olga Duncan met her death, that she was then pregnant, would that fact cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. You understand from what you have already heard, that Mrs. Duncan is presumed to be innocent of this offense, do you not?

A. Yes, sir.

Q. And that it is the duty of the prosecution to prove to your satisfaction, to a moral certainty and beyond a reasonable doubt, her guilt, is that right?

A. That is right.

Q. If you are accepted as a juror in this case, would you require the prosecution to do just that?

A. Yes, sir.

Q. And if after a full and fair consideration of all of the evidence in this case and a weighing of that evidence in the light of the instructions that his Honor will give to the jury, you yourself entertain a reasonable doubt as to Mrs. Duncan's guilt, would you hesitate to resolve that doubt in her favor and return a verdict of not guilty?

A. I would call it as I saw the evidence.

Q. Well, what I'm asking you is, if you entertained a reasonable doubt as to her guilt, conscientiously entertained

that doubt, would you hesitate to resolve that doubt in her favor and find her not guilty?

[fol. 201] A. If I had a doubt, I wouldn't change my mind.

Q. Do you subscribe to any newspapers?

A. Yes, sir.

Q. What papers do you subscribe to?

A. The Ventura Star-Free Press and the Los Angeles Examiner.

Q. Do you sometimes listen to news broadcasts on the radio?

A. Yes, sir.

Q. Have you been subscribing to the Ventura County Free Press for sometime past?

A. Several years.

Q. And do you sometimes listen to newscasts on television?

A. Yes, sir.

Q. As a result of what you read, or reading the newspapers and listening to radio and television broadcasts, do you recall whether or not you read or heard anything concerning this particular case?

A. Yes, I heard quite a lot about it, yes.

[fol. 202] Q. You read something in the newspaper articles concerning this, did you?

A. Yes.

Q. Did you read any newspaper articles which purportedly reported the testimony of witnesses who were called before the grand jury?

A. Yes, I think I read the article.

Q. And did you read articles in the newspaper purportedly reporting the testimony of one Augustine Baldonado before the grand jury?

A. I believe I did.

Q. Did you read any newspaper articles which purportedly reported the testimony of one Luis Moya before the grand jury?

A. Yes, sir.

Q. Did you read any articles which purportedly reported a confession of one Augustine Baldonado?

A. Yes, sir.

Q. Did you read any newspaper articles which purportedly reported a confession of Luis Moya?

A. Yes, I think I did.

Q. In addition to—withdraw that.

In addition to what you read in the newspaper did you hear some news broadcasts concerning this particular case?

A. I heard quite a few.

Q. That is, by way of radio?

[fol. 203] A. Radio and television.

Q. Did you hear some of those broadcasts from your local radio station here in Ventura?

A. Yes, sir.

Q. Did you hear any news broadcasts over your local radio station which purportedly broadcast a confession on the part of Luis Moya?

A. I don't remember if I heard that on the radio or not.

Q. Well, in addition to what you read in the newspaper and what you heard over the radio, have you discussed this case with any persons?

A. Yes, sir.

Q. With many people?

A. Well, quite a few, probably 15 or 20, maybe.

Q. Fifteen or 20. As a result of what you read and your having discussed this case with some 15 or 20 people, did it cause you to form any opinion regarding the guilt or innocence of Mrs. Duncan?

A. Well, without any evidence, yes, I have an opinion.

Q. In other words, from what you read in the past or from what you heard discussed concerning this case, you, yourself, have formed some opinion?

A. That's right.

Q. Regarding the guilt or innocence of Mrs. Duncan; [fol. 204] is that correct?

A. Yes.

Q. And is that opinion favorable or unfavorable.

A. It would be unfavorable.

Q. Is that such an opinion that would require evidence to overcome it?

A. Yes, it would require evidence.

Q. Are you married?

A. Yes, sir.

Q. Do you have children?

A. Yes, sir.

Q. Let's assume, Mr. Porter, that your wife, Mrs. Porter,

God forbid, were on trial here today charged with the identical offense charged in this indictment against Mrs. Duncan, and you wanted your wife to have a trial at the hands of 12 men and women who would be absolutely unbiased and unprejudiced and who would render a fair and impartial verdict. Would you want to submit the guilt or innocence of your wife to a jury of 12 men and women of your present frame of mind?

A. Well, since there has been no evidence presented, no, I wouldn't want to.

Q. You wouldn't want to?

A. No, sir.

Q. That is because of the fact that you have formed an opinion regarding her guilt?

[fol. 205] A. That's right, sir.

Q. Is that correct?

A. That's right.

Q. You wouldn't feel that she could receive a fair and impartial verdict at the hands of such a jury; is that right?

A. Well, not at this present state of the thing because there has been no evidence one way or the other.

Q. Well, what I am asking you is whether you think she could receive a fair and impartial verdict at the hands of 12 people of your present frame of mind?

A. In my present frame of mind, no.

Mr. Sullivan: We challenge this juror for cause.

Mr. Gustafson: Mr. Porter, the law doesn't say that a juror must never have seen or read or heard of anything. It is only that if he has read about something, talked about something and formed an opinion about it or even expressed an opinion. That doesn't disqualify him from being a juror if he can, even though having such an opinion, nevertheless, fairly and impartially try the case. What I am trying to get at is whether you can fairly and impartially try this case even though you have this opinion regarding Mrs. Duncan's guilt. Could you follow the instructions of Judge Blackstock that you are to consider this case, if you serve as a juror, and decide Mrs. Duncan's guilt or innocence only after all of the evidence has been presented here in court and decide it only on the evidence that was presented here [fol. 206] in court? Would you follow Judge Blackstock's instruction to that effect?

The Prospective Juror: If there had been evidence presented, I would follow his legal instructions. The decision would have to be mine as to the guilt or innocence.

Mr. Gustafson: Pardon?

The Prospective Juror: I could follow his instructions on the legal part. The decision of guilt or innocence would have to be mine.

Mr. Gustafson: Yes. In other words, you would have to decide what the facts are in the case, whether you believed such and such or, on the other hand, whether you believed something else, but in deciding what the verdict would be, based on the facts that you have decided, you would take the law as given to you by Judge Blackstock whether you agreed with it or not, would you not?

The Prospective Juror: That's right.

Mr. Gustafson: All right. So that if the judge told you that you must base your decision on the evidence presented here in court and not on anything you may have read or heard, would you follow his directions in that respect?

The Prospective Juror: Well, yes. I think all decisions are based on evidence, not on what you have heard or read. [fol. 207] Mr. Gustafson: Yes. You would be willing to do that, wouldn't you?

The Prospective Juror: Certainly.

Mr. Gustafson: You would act fairly about that then, wouldn't you?

The Prospective Juror: Certainly would.

Mr. Gustafson: And you would act impartially about it?

The Prospective Juror: I hope so.

Mr. Gustafson: And if the judge told you that before you could vote a verdict of guilty against Mrs. Duncan, you would have to be persuaded by the evidence presented here in court beyond a reasonable doubt that she was guilty, you would follow that instruction, would you not?

The Prospective Juror: Yes, sir.

Mr. Gustafson: You would be fair in that respect, would you not?

The Prospective Juror: Yes, sir.

Mr. Gustafson: And you wouldn't vote her guilty if you weren't convinced by that evidence here in court just because from what you read in the newspaper you had that opinion, would you?

The Prospective Juror: I wouldn't vote either way unless I was convinced.

Mr. Gustafson: By the evidence in court?

The Prospective Juror: Right.

[fol. 208] Mr. Gustafson: So that the opinion that you have formed about Mrs. Duncan's guilt from what you have read in the newspapers would not be the governing factor and would not determine your verdict, would it?

The Prospective Juror: No, sir.

Mr. Gustafson: So you would be fair and impartial and would act upon the evidence and on what you heard in court?

The Prospective Juror: Yes, sir.

Mr. Gustafson: And wouldn't you then be satisfied to have a person serve as a juror in a case in which your wife might be involved or in which you might be involved who had the frame of mind that you now have, that despite your opinion formed from reading the newspapers, you would follow the instructions of the judge, and you would decide the case solely on the basis of the evidence presented in court? You would be satisfied with a person like that?

The Prospective Juror: That is a double question.

Mr. Gustafson: Pardon?

The Prospective Juror: That seems to be a double question. There has been no evidence as of now.

Mr. Gustafson: That's right.

The Prospective Juror: The state of mind I am in now, no. After I heard the evidence, why, yes.

Mr. Gustafson: No, but what we are getting at is not your opinion of Mrs. Duncan's guilt or innocence on the [fol. 209] basis of what you may have read, it is your state of mind as to how you will receive this case if you serve as a juror. In other words, do you have a state of mind that will permit you to listen to the evidence and decide the case solely on the basis of the evidence? That is the state of mind we are talking about.

The Prospective Juror: That is it.

Mr. Gustafson: And that is the state of mind you have, isn't it?

The Prospective Juror: Yes, sir.

Mr. Gustafson: It is one where you will listen to the

case, the evidence presented here in court and base your verdict solely on what you hear in court here?

The Prospective Juror: That's right.

Mr. Gustafson: And, now, with that state of mind—that is the one we are talking—you would be satisfied to have somebody in your family or yourself tried by 12 persons with that state or frame of mind, wouldn't you?

The Prospective Juror: If after the evidence has been presented, yes.

Mr. Gustafson: Yes. I submit the juror has shown he is not disqualified for cause.

Mr. Sullivan: May I interrogate him a little further?

The Court: What? What were you about to say?

Mr. Sullivan: May I interrogate him a little further, Your Honor?

[fol. 210] The Court: All right, I will let you do it.

Mr. Sullivan:

Q. Mr. Porter, these some 15 or 20 people with whom you discussed this case, you do not know of your own knowledge whether the matters concerned in this particular case that they discussed with you were matters that they knew of their own personal knowledge, do you?

A. I don't know. I am sure they didn't or they would have said so.

Q. They didn't tell you one way or the other?

A. No, sir.

Q. So you couldn't possibly know whether they knew of their own personal knowledge unless they told you so; isn't — right?

A. That's right.

Q. And you don't know whether or not any of those persons might possibly be witnesses in this case, do you?

A. Well, they didn't say one way or the other.

Q. You don't know who all the witnesses are that are going to be called in this case, do you?

A. I don't know any of them.

Q. And you still feel, however, despite the questions which were asked of you by Mr. Gustafson, that as you now sit in this jury box in your present frame of mind that you wouldn't want your wife or yourself to be tried before a jury of your present frame of mind, would you?

A. If I had to make the decision right now.

[fol. 211] Q. Well, you have to make it now.

Mr. Gustafson: No.

The Prospective Juror: No you don't.

Mr. Sullivan:

Q. On your present frame of mind as to whether or not you would want to be tried by a jury of your present frame of mind.

A. No, I wouldn't want to in my present frame of mind.

Q. You wouldn't want your wife to be tried before a jury with your present frame of mind, would you?

A. No, sir.

Q. You wouldn't want to yourself be tried before a jury of your present frame of mind, would you?

A. No, sir.

Mr. Gustafson: I object to this question, Your Honor, as being misleading in that counsel is talking about the juror's present opinion of guilt, not his present frame of mind with respect to how he will receive and act upon the evidence.

Mr. Sullivan: I didn't ask his present opinion of guilt. I asked him his present frame of mind. That is what I am inquiring into. I renew my challenge.

Mr. Gustafson: Well, I would like to ask the prospective juror another question.

The Court: All right.

Mr. Gustafson: Mr. Porter, in responding to Mr. Sulli-

[fol. 212] van's question, as I understand it—correct me if I am wrong—what you were talking about was you wouldn't want to have yourself or anybody else tried at this moment by someone who would have to make the decision right now based upon your opinion of guilt; isn't that true?

The Prospective Juror: That's right, before there was any evidence.

Mr. Gustafson: In other words, if you just had to sit here right now and decide the case before there is any evidence, without any instructions from the judge, and so forth, then, in effect, what you are saying is you have an opinion that Mrs. Duncan is guilty?

The Prospective Juror: That's right.

Mr. Gustafson: But you have the frame of mind, do you

not, that despite that opinion of her guilt, you will, if chosen as a juror, act fairly and impartially; is that correct?

The Prospective Juror: That's correct.

Mr. Gustafson: I submit, Your Honor, that that definitely qualifies the juror precisely within the terms of Section 1076 of the Penal Code.

The Court: Mr. Porter, is it Porter?

The Prospective Juror: Yes, sir.

The Court: You realize, of course, that this is a very important case, don't you, a murder case?

The Prospective Juror: Yes, sir.

[fol. 213] The Court: And if you shoud become a member of the jury to try this case, wouldn't you be fair and impartial?

The Prospective Juror: Certainly would.

The Court: Well, you couldn't be fair and impartial unless you set aside any opinion that you now have and render a verdict predicated absolutely and entirely on the evidence that is educed here in court, and not on anything you have heard on the outside. Do you understand that?

The Prospective Juror: That is what it seems to be based on, yes.

The Court: Could you and would you, if accepted as a member of this jury, render a verdict predicated entirely and solely upon the evidence educed here in court?

The Prospective Juror: Yes, sir.

The Court: The challenge is disallowed.

Mr. Sullivan: All right, Your Honor.

Q. Mr. Porter, do you know of any reason whatsoever that you could not render a fair and impartial verdict in this case?

A. No, I don't, in any case.

Mr. Sullivan: I pass for cause, Your Honor.

Q. Is it Miss or Mrs. Sherwin?

A. Miss Sherwin.

Q. Mrs.?

[fol. 214] A. Miss. I would like to be excused, to who. I don't have any transportation back and forth.

Mr. Sullivan: Miss Sherwin has indicated, Your Honor, that she would like to be excused. She said that she had no transportation back and forth to court.

The Court: Where do you live?

The Prospective Juror: Port Hueneme.

The Court: Where?

The Prospective Juror: Port Hueneme.

The Court: Well, you want to stipulate that she may be excused?

Mr. Sullivan: I am willing to so stipulate, Your Honor.

Mr. Gustafson: Is this a temporary situation, Miss Sherwin?

The Prospective Juror: No. I can get transportation to the courthouse, but I can't get transportation back.

Mr. Gustafson: You can't get it back?

The Prospective Juror: No.

Mr. Gustafson: All right, I will stipulate.

The Court: All right, you are excused.

Call another name, please.

The Clerk. Susie F. Saavedra—S-a-a-v-e-d-r-a.

The Court: How do you pronounce your name?

The Prospective Juror: Saavedra.

The Court: Saavedra.

[fol. 215] The Prospective Juror: Saavedra.

The Clerk: Well, you have been here in attendance on the court yesterday and today both, haven't you?

The Prospective Juror: Yes, sir.

The Court: You have heard everything that has been said?

The Prospective Juror: I have.

The Court: You know what the case is all about?

The Prospective Juror: Yes.

[fol. 216] Q. Mrs. Saavedra, may I inquire as to your business or occupation, please?

A. I am a homemaker.

Q. And is there a Mr. Saavedra?

A. No, sir.

Q. There is not?

A. (The prospective juror shook her head negatively.)

Q. You understand from what you have heard in court yesterday and today, that Mrs. Duncan is charged in this indictment with the offense of murder, do you not?

A. Yes.

Q. Is there anything about the nature of that charge

that would cause you to entertain any bias or prejudice against her?

A. No, sir.

Q. Assuming that the evidence in this case should disclose that Olga Duncan, the alleged victim of this alleged murder, was the daughter-in-law of Mrs. Duncan, would that cause you to entertain any bias or prejudice against her?

A. No.

Q. Well, assuming further that the evidence should disclose that Olga Duncan at the time she met her death was then pregnant, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

(The prospective juror shook her head negatively.)

Q. Have you or has any member of your family or any-[fol. 217] one near and dear to you ever been the victim of a crime of assault or violence?

A. No.

Q. Or ever had occasion to be a witness against any person charged with such a crime?

A. No.

Q. Are you acquainted with Mr. Gustafson or any of his deputies or members of the staff?

A. Not with Mr.—I know Mr. Henderson.

Q. I am sorry?

A. Mr. Henderson.

Q. You know Mr. Henderson. Have you known Mr. Henderson for sometime?

A. Yes, I have.

Q. A few years, did you say?

A. (The prospective juror nodded her head affirmatively.)

Q. Is he a friend of yours?

A. I wouldn't call him a friend. I have talked to him when I have needed his services.

Q. I am sorry?

A. I have talked to him when I have needed his services.

Q. You have needed his services as a member of the District Attorney's staff?

A. That is right.

[fol. 218] Q. Is that correct? Has that been on a number of occasions?

A. About twice, I think.

Q. About twice?

A. (The prospective juror nodded her head affirmatively.)

Q. Is that when you had occasion to make a complaint against some person?

A. Yes.

Q. Did that particular complaint involve some act of violence or attempted violence on the part of any person?

A. No.

Q. Well, now, the fact that you have had occasion to avail yourself of the services at sometime in the past, on several occasions—assuming that some members of the District Attorney's staff should become witnesses in this case for the prosecution, would you be apt to give any greater credence to their testimony than you would that of any witness, merely because of your acquaintanceship and the services rendered to you by him?

A. No.

Q. Well, assuming that some other law enforcement officers, say some Deputy Sheriff, should testify, would you be apt to give any greater credence to their testimony merely because they happened to be law enforcement officers?

A. No.

[fol. 219] Q. You feel that you could weigh and consider their testimony by the same standards as you would that of any other witness?

A. That is right.

Q. Well, assuming further that Mrs. Duncan should take the witness stand and testify as a witness in her own behalf, do you feel that you would be apt to deny her the benefit of her own testimony merely because she happens to be the defendant in this case?

A. No.

Q. You realize that there are two sides to a lawsuit, do you?

A. Yes.

Q. You feel that you could keep your mind open regard-

ing the guilt or innocence of Mrs. Duncan until you have heard all of the evidence in this case?

A. That is right.

Q. It is not only the evidence offered on behalf of the prosecution but that offered on behalf of the defendant as well?

A. (The prospective juror nodded her head affirmatively.)

Q. You don't think that at the conclusion of the People's evidence, you would then come to a decision regarding her guilt?

A. I didn't quite understand that.

[fol. 220] Q. Well, at the conclusion of the People's evidence, you haven't heard any of the defense testimony up to that time. Do you think that you could refrain from forming an opinion as to her guilt until you have heard all the evidence?

A. Yes.

Q. You realize from what you have heard, that she is presumed to be innocent of this offense, do you not?

A. That is right.

Q. You realize that it is the duty of the prosecution to prove to the satisfaction of the jury, to a moral certainty and beyond a reasonable doubt, her guilt?

A. That is right.

Q. If you are accepted as a juror in this case, would you require the prosecution to do just that?

A. That is right.

Q. Let's assume that you are accepted as a juror in this case and you have heard all of the evidence, you have heard the instructions that will be given to you by His Honor, you have retired to the jury room, you have discussed this evidence in the light of the instructions as given to you by the Court, and you yourself conscientiously entertain a reasonable doubt as to her guilt. Would you have any hesitancy in resolving that doubt in her favor and voting for a verdict of not guilty?

A. Yes, I think I would have.

Q. Do you think that you would have difficulty in doing [fol. 221] that?

A. Yes.

Q. Even though the Court told you that that was your duty?

A. Yes.

Q. You would have difficulty doing that?

A. Yes.

Q. You don't think that you could do it?

A. Well, if I heard all the evidence on both sides, I would.

Q. Let me ask you this: Do you subscribe to any of the local papers?

A. Oxnard Press-Courier.

Q. And do you sometimes listen to news broadcasts on the radio?

A. Very seldom.

Q. Do you listen to any of the news broadcasts on television?

A. Sometimes.

Q. How long have you subscribed to the Oxnard Press-Courier?

A. Oh, about 15 years.

Q. So that you have been a continuous subscriber at least since early last September down to the present time, have you?

A. Yes.

[fol. 222] Q. And I take it then that you have read articles in that newspaper concerning this particular case, have you not?

A. Yes, I have.

Q. And in the articles which you read, did you read any newspaper articles which purportedly reported the testimony of the witnesses who were called before the Grand Jury in this matter?

A. Yes, I read something about it.

Q. And in any of those articles which you read, did they purport to report the testimony given by one Baldonado before the Grand Jury?

A. Well, I read about it but I didn't pay much attention to it.

Q. Do you know whether or not you read any newspaper articles which purportedly reported the testimony of one Luis Moya before the Grand Jury?

A. I guess I did. I remember reading something the other day.

Q. Did you hear any news broadcasts on the radio concerning this particular case?

A. No.

Q. Did you hear any newscasts over TV concerning this particular case?

A. I think I did a couple of times.

Q. Did you read any newspaper articles which purport-
[fol. 223] edly reported statements released to the press by Mr. Gustafson?

A. Well, I did, but I don't recall what he said.

Q. They were articles purportedly released to the press by him concerning this particular case, is that right?

A. Yes, I read something about that.

Q. Well, in addition to what you read, did you discuss this case with anybody?

A. Oh, just with my family.

Q. Any outsiders?

A. No.

Q. Well, as a result of what you read and what you discussed with members of your family, did you yourself form any opinion regarding the guilt of Mrs. Duncan?

A. Yes, I did.

Q. And was that opinion which you formed, unfavorable to Mrs. Duncan?

A. Yes.

Q. In addition to having formed that opinion yourself, did you express that opinion to other persons?

A. No, only those in my house.

Q. Do you still have that same opinion?

A. Yes, I do.

Q. If you were accepted as a juror in this case, would it require some evidence on the part of the defense in this case to overcome the opinion which you now have?

[fol. 224] A. Yes, it would.

Q. You feel that you couldn't set that opinion completely aside?

A. Well, maybe I could. I don't know.

Q. You don't know that you could?

A. (The prospective juror shook her head negatively.)

Q. You feel that that opinion is apt to influence your verdict to some extent if you were accepted as a juror in this case?

A. Well, to some extent, I guess.

Q. What?

A. To some extent.

Q. Well, let's assume that you yourself were sitting in this chair at the counsel table here today and you were charged with the identical offense that is charged in this indictment against Mrs. Duncan and you wanted to have a trial at the hands of 12 men and women who would be absolutely fair and impartial, unbiased and unprejudiced in any way. Do you feel that you could receive such a trial at the hands of 12 men and women of your present frame of mind?

A. No.

Q. You don't feel that you, that a person of your present frame of mind, could act fairly and impartially in the matter, is that right?

A. Yes.

Mr. Sullivan: I will challenge this juror for cause, [fol. 225] your Honor.

Mr. Gustafson: I would like to examine, your Honor.

Mrs. Saavedra, you say that you now have an opinion that Mrs. Duncan is guilty?

(The prospective juror nodded affirmatively.)

Mr. Gustafson: And you base that opinion upon what you have read in the newspapers?

The Prospective Juror: That is right.

Mr. Gustafson: Now, if you were selected to serve as a juror in this case, would you be willing to follow an instruction of Judge Blackstock that in deciding for the purposes of a verdict whether Mrs. Duncan was guilty or not guilty, you should consider only the evidence that you hear presented to you here in court, would you follow such an instruction from Judge Blackstock?

The Prospective Juror: Yes, I would.

Mr. Gustafson: And so if he told you that anything that you have read or heard about, outside of the courtroom, you are not to consider in reaching a verdict, you would follow that instruction, would you not?

The Prospective Juror: Yes.

Mr. Gustafson: And if the Judge told you that despite your opinion of Mrs. Duncan's guilt, you are not to vote guilty unless you are convinced beyond a reasonable doubt

from the evidence here in court that she is guilty, you would follow that, would you not?'

[fol. 226] The Prospective Juror: I didn't understand.

Mr. Gustafson: I say, isn't it true, that you would follow Judge Blackstock's instruction that you are not to vote a verdict of guilty against Mrs. Duncan unless you are convinced from the evidence here in court, beyond a reasonable doubt, that she is guilty?

(The prospective juror nodded affirmatively.)

Mr. Gustafson: You would do that, wouldn't you?

(The prospective juror nodded affirmatively.)

Mr. Gustafson: And so you would also follow his instruction that if you are not convinced beyond a reasonable doubt by the evidence presented here in court of her guilt, then you would vote that she is not guilty, isn't that right?

The Prospective Juror: If I wasn't sure?

Mr. Gustafson: Yes. If I didn't prove that she was guilty, according to the rules of law, you wouldn't vote her guilty, anyway, would you.

The Prospective Juror: No. I mean if I wasn't satisfied, I mean I couldn't vote like that.

Mr. Gustafson: That is right. You couldn't vote her guilty unless you were satisfied in your mind beyond a reasonable doubt that she was guilty?

The Prospective Juror: Yes.

Mr. Gustafson: Even though you might start out in this case with an opinion that she is guilty, based on what you read in the newspapers, isn't that true?

[fol. 227] The Prospective Juror: That is right.

Mr. Gustafson: So you would then be fair?

The Prospective Juror: Sure I would.

Mr. Gustafson: And you would be impartial, sitting as a juror in this case?

(The prospective juror nodded affirmatively.)

Mr. Gustafson: And you would give Mrs. Duncan the benefit of the presumption of innocence and all the other presumptions that she is entitled to, that Judge Blackstock tells you about, wouldn't you?

The Prospective Juror: Yes.

Mr. Gustafson: So your frame of mind is that if you are selected as a juror, you would be fair and impartial?

The Prospective Juror: Yes.

Mr. Gustafson: I submit that the juror is not challengeable for cause and is not disqualified.

Mr. Sullivan: I would like to ask one or two other questions, if I may, your Honor.

Q. Despite the fact that you would do your best to follow the instructions of the Court, you would still, nevertheless, feel that your verdict would be influenced by the opinion which you now hold, isn't that true?

A. What do you mean that it would be influenced?

Q. I mean that it would have some bearing on the verdict which you would render in this case, isn't that right?

A. No. That is the way I think right now, because [fol. 228] that is what I have read.

Q. That is right. And based upon what you think right now, it would have some influence on the verdict which you might possibly render in this case?

A. No, it would not.

Q. But you still wouldn't want to be tried by a jury—you yourself wouldn't want to be tried by a jury in your present frame of mind?

A. Right now, I wouldn't.

Q. Well, that is what we are concerned with, your present frame of mind.

A. Well, I don't understand what you are trying to say.

Q. In other words, in your present frame of mind, you don't feel that you could get a fair and impartial verdict, do you?

A. No.

Q. That is correct, isn't it?

A. Yes.

Mr. Sullivan: I will renew my challenge.

Mr. Gustafson: It is obvious, your Honor, that this prospective juror is again stating that she now has an opinion of the guilt of Mrs. Duncan but that her frame of mind is such that she will follow the instructions of the Court and will be fair and impartial.

Mrs. Saavedra, is it not so, that what you mean is that [fol. 229] right at the moment, based upon what you have

read in the newspapers, you believe Mrs. Duncan is guilty?

The Prospective Juror: That is right.

Mr. Gustafson: But your frame of mind is such that it is open; that is, you will listen to the evidence, you will decide the case on the basis of the evidence that you hear in court and not on what you read in the newspaper, you will set aside any opinion that you formed from reading the newspaper, and decide the case solely on the basis of the evidence that you hear in court, isn't that right?

The Prospective Juror: That is right.

Mr. Gustafson: And you wouldn't mind, if you were on trial, to be tried by 12 jurors who have that type of fair and impartial frame of mind, would you?

The Prospective Juror: No.

Mr. Gustafson: All right.

Mr. Sullivan:

Q. Well, isn't this true, that it would require evidence on behalf of Mrs. Duncan to overcome your present opinion?

A. (The prospective juror nodded affirmatively.)

Q. That is what you mean, isn't it?

A. Yes.

Q. And that the burden would rest upon her to prove that to you, isn't that true?

A. (The prospective juror nodded affirmatively.)

Mr. Gustafson: Now, Mrs. Saavedra, if the Judge tells [fol. 230] you that you must vote Mrs. Duncan not guilty, if I don't produce evidence of her guilt, and if the Judge tells you further that she doesn't have any burden whatever of proving anything, she doesn't have to prove she is innocent under our system, I have to prove she is guilty under our system, would you follow that instruction then? Would you go by what Judge Blackstock tells you in that regard? That is, we are not talking——

Mr. Sullivan: Well, let her answer the question. You have asked her now. Give her a chance to answer it.

Mr. Gustafson: I don't think she understood.

The Prospective Juror: I didn't understand.

Mr. Gustafson: In other words, Mrs. Saavedra, I'm not now talking about the opinion that you have in your mind of Mrs. Duancan's guilt. I am talking about a verdict, if you should serve as a juror. If you should serve as a juror

and the Judge told you that you could not bring in a verdict of guilty unless I prove that Mrs. Duncan was guilty, you wouldn't do so, would you? You would follow the Judge's instructions, isn't that right?

The Prospective Juror: Yes.

Mr. Gustafson: And so if I didn't bring in any evidence whatever and the Judge told you that Mrs. Duncan doesn't have to prove her innocence, that I have to prove her guilt, you wouldn't require Mrs. Duncan to prove her innocence for purposes of bringing in a verdict, would you? In other [fol. 231] words, you wouldn't——

Mr. Sullivan: Are you going to let her answer the question?

Mr. Gustafson: All right, I will strike the question and reframe it. You wouldn't go out, if the Judge told you that Mrs. Duncan doesn't have to prove anything, that she does not have to prove her innocence, you wouldn't go out and then vote her guilty because she didn't prove her innocence to you, would you?

The Prospective Juror: No.

Mr. Gustafson: You would follow what the Judge said?

(The prospective juror nodded affirmatively.)

Mr. Gustafson: Isn't that true?

(The prospective juror nodded affirmatively.)

Mr. Gustafson: So that if the Judge tells you that you cannot vote her guilty unless you are convinced beyond a reasonable doubt from the evidence produced her in court that she is guilty, you would follow that, wouldn't you?

(The prospective juror nodded affirmatively.)

Mr. Gustafson: So if I didn't produce such evidence, you would vote her not guilty, wouldn't you?

The Prospective Juror: If you wouldn't produce evidence?

Mr. Gustafson: If I didn't produce evidence showing that she was guilty. Let's pretend now that the case is all over and you have been a juror and I didn't produce evidence convincing you that Mrs. Duncan was guilty.

[fol. 232] The Prospective Juror: Unless she proved her innocence?

Mr. Gustafson: She didn't prove anything. She didn't do anything. I just simply did not produce evidence that she was guilty.

The Prospective Juror: Well, I wouldn't know what to say about that.

Mr. Gustafson: You nevertheless might go out and vote her guilty, even though I didn't prove it?

The Prospective Juror: No.

Mr. Gustafson: You wouldn't do that, would you?

(The prospective juror shook her head negatively.)

Mr. Gustafson: You would make me prove it?

(The prospective juror nodded affirmatively.)

Mr. Gustafson: If the Judge told you that I had to prove her guilty, you wouldn't find her guilty unless I prove it?

The Prospective Juror: Yes.

Mr. Gustafson: And if the Judge said that she doesn't have to prove anything under our system of law, she doesn't have to prove her innocence, but I have to prove her guilty, you would be agreeable to follow that instruction, would you not?

The Prospective Juror: Yes, I would.

Mr. Gustafson: All right.

The Court: Mrs. Saavedra, is that it?

The Prospective Juror: Yes, sir.

The Court: If you should serve on this jury, you [fol. 233] realize, of course, that this is a very serious court case, don't you?

The Prospective Juror: Yes, sir.

The Court: A person here is charged with murder. That is very serious. You understand that? You understand that it is an important case, don't you?

The Prospective Juror: Yes, I do.

The Court: And if you should serve on the jury, you would want to be fair and impartial, wouldn't you?

The Prospective Juror: Yes, sir, I would.

The Court: You would want to be honest about it, wouldn't you?

The Prospective Juror: Yes.

The Court: Well, now, the law is that the prosecution must prove this defendant guilty, the prosecution that is represented by Mr. Gustafson, the District Attorney of

Ventura County. He must prove this defendant guilty before you can vote that she is guilty, and if he fails to prove it to a moral certainty and beyond a reasonable doubt, then you would have to acquit her.

The Prospective Juror: That is right.

The Court: You understand that?

The Prospective Juror: I do.

The Court: Now, if you should serve on the jury, would you set aside entirely and forget about any opinion that you have now about her guilt, set that aside entirely and base your verdict entirely and solely upon the evidence that is [fol. 234] brought out here, adduced here in court? Would you do that?

The Prospective Juror: Yes, sir.

The Court: Would you do that?

The Prospective Juror: Yes, sir.

The Court: The challenge is disallowed.

Mr. Sullivan:

Q. Mrs. Saavedra, do you know of any reason whatsoever why you could not give to Mrs. Duncan a fair and impartial trial?

A. No.

Mr. Sullivan: I will pass for cause.

Q. Is it Miss Osborn or Mrs.?

A. Mrs.

Q. Mrs.?

A. Yes.

The Court: You attorneys, I guess we better take a brief recess.

(Recess.)

The Court: The following two witnesses or, rather, prospective jurors, are excused by stipulation: Forest Fuger and Gerry Baptiste.

All right, you may proceed.

Mr. Sullivan: Thank you, your Honor.

Q. Mrs. Osborn, you reside in Ventura, do you?

A. Yes, I do.

Q. And have you resided here for sometime?

[fol. 235] A. Fifteen years.

Q. And may I inquire as to your business or occupation?

A. I am employed in the diet department at the Ventura General Hospital.

Q. Mrs. Osborn, is there a Mr. Osborn?

A. Yes, there is.

Q. And may I inquire as to his business?

A. He is employed on a ranch.

Q. On a ranch?

A. That is right.

Q. Well, now, you have been sitting in the jury box since yesterday morning and you understand from what you have already heard in this courtroom, that Mrs. Duncan is charged in this indictment with murder of one Olga Duncan, do you not?

A. Yes.

Q. Is there anything about the nature of that charge that would cause you to entertain any bias or prejudice against her?

A. No, there isn't.

Q. Have you or has any member of your family or has anyone near and dear to you ever been the victim of a crime of violence or passion?

A. No.

Q. Or ever had occasion to be a witness against any person charged with such a crime?

[fol. 236] A. No.

Q. Well, if the evidence in this case should disclose that Olga Duncan, the alleged victim, was the daughter-in-law of Elizabeth Duncan, would that cause you to entertain any bias or prejudice against her?

A. No.

Q. And if the evidence should further disclose that at the time Elizabeth Duncan met her death, she was then pregnant, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. When who met her death, sir? Did you say Elizabeth Duncan?

Q. I said Olga Duncan was then pregnant. If I said Elizabeth, I mean Olga.

A. No.

Q. That would not?

A. No.

Q. Have you or any member of your family or anyone near and dear to you ever been connected with any law enforcement agency?

A. No.

Q. Well, assuming that certain law enforcement officers should testify in this case, would you be apt to give any greater credence to their testimony merely because they happened to be law enforcement officers?

A. I would not.

[fol. 237] Q. You feel that you could weigh and consider their testimony by the same standard that you would that of any other witness?

A. Absolutely.

Q. And in the event that Mrs. Duncan should see fit to take the witness stand and testify as a witness in her own behalf, do you think that you could give to her the benefit of her own testimony?

A. I am sure I could.

Q. You wouldn't deny her the benefit of that testimony merely because she happened to be the defendant in this case?

A. No.

Q. Are you personally acquainted with Mr. Duncan or any of the deputies or members—I mean Mr. Gustafson?

A. No, I am not.

Q. Or any of his deputies or members of the staff?

(The prospective juror shook her head negatively.)

Q. You realize from what you have already heard, that Mrs. Duncan, as she sits in this courtroom today, is clothed with the presumption of innocence, do you not?

A. That is right.

Q. But the law says that she is presumed to be innocent of this offense and that the burden of proving her guilty to a moral certainty and beyond a reasonable doubt rests upon the prosecution?

[fol. 238] A. That is right.

Q. And you understand from what you have already heard, that insofar as the law that is applicable to this case is concerned, you are going to receive that from His Honor?

A. That is right.

Q. Do you feel that you can accept that law as given

to you by the Court and attempt to apply it to the evidence in this case, irrespective of whether you think that it is good law or bad law?

A. I don't think I understood your question, sir.

Q. Well, at the conclusion of this case, the Court is going to instruct you as to the law applicable to this case. You have to receive that solely from the Court, not from we attorneys. The Judge will tell you what the law is. And when you retire to the jury room, you have to weigh the evidence that you heard in this courtroom in the light of the law as given to you by the Court. The Court is going to lay down certain rules of law that will guide you in your deliberations in this case. Do you think that you can accept that law from the Court and apply it to the evidence in this case, even though you yourself might say, "Well, I don't think that is very good law"?

A. Yes.

Q. You would do it irrespective of whether you believed it to be a good rule of law or a bad rule of law?

A. Well, I don't think that he would be giving it to [fol. 239] me unless it was a good law.

Q. You would take it from the Court?

A. Yes.

Q. Irrespective of whether you believed in it or not?

A. Yes.

Q. That you personally believed it to be good law, you would accept it anyway?

A. Yes.

Q. I am going to read some names to you and ask you if you recognize any of these names a- persons that you know or are personally acquainted with or have ever met: Clarence R. Henderson?

A. (The prospective juror shook her head negatively.)

Q. D. Gordon Johnson?

A. (The prospective juror shook her head negatively.)

Q. Virgil E. Payton?

A. I have heard of Mr. Payton but I do not know him.

Q. You don't know him?

A. No, I don't.

Q. But you have heard about him?

A. I have heard about him.

Q. Was that in connection with some business transactions you had out at the hospital there?

A. No. I have just read about his work in the paper, being the County Coroner.

[fol. 240] Q. Doreen Corraini.

A. No.

Q. Sylvia Butler?

A. (The prospective juror shook her head negatively.)

Q. Hal V. Hammons, Jr.?

A. No.

Q. Did you ever hear of Mr. Hammons as being an attorney practicing in this County?

A. I have heard of it and I have heard his name in the paper. That is all.

Q. But you are not personally acquainted with him?

A. No.

Q. Emma Short?

A. No.

Q. Barbara Reed?

A. No.

Q. Diane Romero?

A. No.

Q. Rudolph Romero?

A. No.

Q. Mary Ann Dowhower?

A. No.

Q. Dorothy Barnett?

A. No.

Q. You do not recognize any of those names?

A. (The prospective juror shook her head negatively.)

[fol. 241] Q. Do you subscribe to any of the local newspapers?

A. Star Free Press.

Q. Have you been a subscriber of the Star Free Press for some time?

A. Yes.

Q. I take it that you then have at least been a subscriber since early last December?

A. Yes, I have.

Q. Down to the present date?

(Prospective juror nods head affirmatively.)

Q. You still subscribe to that newspaper?

A. Yes.

Q. These hours that you work at the hospital, are they during the daytime?

A. Yes, they are.

Q. Or evening? Do you have a radio at home?

A. Yes, sir, I do.

Q. You sometimes listen to news broadcasts on the radio?

A. Occasionally.

Q. That is, I take it, principally over your local station here in Ventura?

A. Yes.

Q. And in addition to that do you sometimes listen to news broadcasts on television?

[fol. 242] A. Yes, I do.

Q. Well, from reading your local newspaper, do you recall ever having read anything concerning this particular case?

A. Yes, I have.

Q. And in the articles which you read concerning this case do you recall whether or not you ever read any articles which purport to report statements concerning this case given to the press by Mr. Gustafson, the District Attorney?

A. Yes, I have read those reports.

Q. You read them in the——

A. Yes.

Q. —local paper? And in addition to that, do you recall having read any articles in the local newspaper which purportedly reported a confession by Augustine Baldonado?

A. Yes, I read that.

Q. And did you read any articles in the local paper which purportedly reported a confession by one Luis Moya?

A. Yes, I did.

Q. Now, in addition to that do you recall ever hearing any news broadcasts on your local radio station which purportedly broadcast a confession by Luis Moya?

A. No.

[fol. 243] Q. You don't recall hearing that particular broadcast?

A. No.

Q. Did you hear any broadcast on your local station concerning this particular case?

A. Just in the news report.
Q. In the news report?
A. Yes.
Q. You heard that from time to time?
A. Yes.
Q. In the past, is that correct?

(Prospective juror nods head affirmatively.)

Q. Do you recall when you last heard any news report concerning this case?
A. Well, I would say it has been a week.
Q. About a week. Do you recall when you last read anything in the newspaper concerning this particular case?
A. Last night.
Q. Last night. In addition to what you read in the newspaper and the news broadcasts which you heard over your local station, have you discussed the matters which you read or heard with any other person?
A. Well, it has been discussed, yes.
Q. I take it that it has been discussed among your fellow employees at the General Hospital there?
[fol. 244] A. Some.
Q. And among friends and acquaintances?
A. A few.
Q. And you don't know whether or not these people with whom you discussed this matter had any personal knowledge of the facts they talked about, do you?
A. No.
Q. And you do not know whether or not any of these persons with whom you discussed this matter are likely to be called as witnesses in this case, do you?
A. I don't think so.
Q. But you don't know?
A. No, I don't know.
Q. You don't know because you don't know who the witnesses are that are going to be called in this case?
A. No.
Q. Do you?
A. No.
Q. As a result of what you read in the newspapers and as a result of what you heard on radio broadcasts and discussing this matter with other people did you, yourself,

form any opinion concerning the guilt or innocence of Mrs. Duncan?

A. I did not.

Q. Did you ever express any opinion?

A. No.

[fol. 245] Q. Concerning her guilt or innocence?

A. No.

Q. Did you ever hear any of the people with whom you discussed this case express any opinion concerning that?

Mr. Gustafson: That is objected to as incompetent, irrelevant and immaterial.

The Court: Sustained.

Mr. Sullivan:

Q. As you sit in the jury box here today do you have any opinion concerning the guilt or innocence of Mrs. Duncan?

A. No.

Q. Have you any preconceived notion that merely because she has been indicted by the grand jury that she is guilty of this offense?

A. No.

Q. Do you feel that if you are accepted as a juror in this case, that you would require the prosecution to prove to your satisfaction, to a moral certainty and beyond a reasonable doubt her guilt?

A. Yes.

Q. Let's assume that you are accepted as a juror in this case, heard all the evidence, the instructions as given to you by His Honor, and you retire to the jury room. You discuss the matter fully and fairly among your fellow jurors. At that time you conscientiously entertain a reasonable doubt as to Mrs. Duncan's innocence. Would you hesitate under those circumstances to bring in a verdict [fol. 246] of not guilty?

A. No.

Q. Let's assume that you are the only one who had this reasonable doubt and your fellow jurors had a contrary opinion. Would you be apt to surrender—

The Court: Mr. Sullivan, you asked her rather a peculiar question there, as I see it, upon thinking it over. You asked the juror, you said as to her innocence. You meant to say as to her guilt.

Mr. Sullivan:

I will reframe the question. Thank you, Your Honor.
The Court: All right.

Mr. Sullivan:

Q. Mrs. Osburn, assuming that after you have retired to the jury room and have fully and fairly discussed the evidence in this case among your fellow jurors, weighed and considered it in the light of the instructions that will be given to you by His Honor, that you, yourself, entertain a reasonable doubt as to Mrs. Duncan's guilt. Under those circumstances would you hesitate to vote for a verdict of not guilty?

A. I still don't quite understand that. Would you rephrase——

Q. I will put it in a nut shell. After you have considered all of the evidence in this case, you, yourself, have a reasonable doubt as to her guilt, under those circumstances would you hesitate to vote for a verdict of not guilty?

[fol. 247] A. No.

Q. In other words, you understand that so long as you have a reasonable doubt as to her guilt, it would be your duty as a juror to vote for a verdict of not guilty?

A. That's right.

Q. And you would do just that, would you not?

A. Yes.

Q. Let's assume that you are in the jury room and you conscientiously entertain this reasonable doubt as to her guilt, but your fellow jurors have a different opinion. Would you be willing to surrender your conscientious opinion and vote with your fellow jurors merely to reach a verdict in this case?

A. Absolutely not.

Q. In other words, so long as you entertained that reasonable doubt you would continue to vote for a verdict of not guilty?

A. That's right.

Q. Is that correct?

A. That's right.

Q. Now, you heard me state yesterday to some of the prospective jurors that I practice law in Los Angeles

County. I am, shall we say, a stranger in your community. Do I come in here, as far as you are concerned, with any handicap at all merely because I am not a practicing at-
[fol. 248] torney in Ventura County?

A. No.

Q. You wouldn't under any circumstances hold that against my client, Mrs. Duncan, would you?

A. Absolutely not.

Q. You feel that you could be just as fair to us as if Mrs. Duncan were being represented by an attorney who practices in this particular county?

A. That's right.

Q. You have no preconceived notion that I am going to come in here and try to tell you or any other member of the jury what you are going to do in this case, do you?

A. No.

Q. Let's assume that you, yourself, were seated in this chair at this counsel table today, charged with the identical offense that is charged against Mrs. Duncan, and that you wanted a trial at the hands of 12 men and women who were absolutely unbiased and unprejudiced, and all you wanted them to do was to return into court with a fair and impartial verdict. Do you think that you could get such a trial at the hands of 12 men and women of your present frame of mind?

A. I do.

Q. Do you know of any reason whatsoever that you could not give to Mrs. Duncan a fair and impartial trial?

A. I do not.

Mr. Sullivan: Thank you, Mrs. Osburn.

[fol. 249] Q. Mrs. Arend?

A. Arend.

Q. I'm sorry. It is Mrs. Arend?

A. It is.

Q. Mrs. Arend, may I inquire as to your business or occupation?

A. I am a homemaker.

Q. Is there a Mr. Arend?

A. Yes, sir.

Q. What is his business, please?

A. Rancher.

Q. You live in Simi?
A. Simi, yes.
Q. Simi. Have you lived there for some time?
A. Nearly four years.
Q. 34?
A. Four.

Q. Four years. I see. Well, Mrs. Arend, I know that you also have been sitting in this jury box since probably about 11:00 o'clock yesterday morning, and you certainly understand by now the nature of the charges that are contained in this indictment against my client, Elizabeth Duncan?

A. Yes.

Q. Have you had any previous experience as a trial juror in criminal cases?

A. No, I haven't.

[fol. 250] Q. Is there anything about the nature of those charges that would cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. Have you or has any member of your family or anyone near and dear to you ever been the victim of any crime of assault or passion?

A. No.

Q. Or ever had occasion to be a witness against any person charged with any such crime?

A. Not that I know of.

Q. You further understand from what you have heard that the alleged victim of this alleged murder is one Olga Duncan?

A. Yes.

Q. Assuming that the evidence in this case discloses that Olga Duncan was the daughter-in-law of Elizabeth Duncan. Would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. May I inquire, do you have a family, children of your own?

A. Yes.

Q. Assuming that the evidence in this case should disclose that Olga Duncan at the time she met her death was

then pregnant. Would that cause you to entertain any bias [fol. 251] or prejudice against Mrs. Duncan?

A. No.

Q. You realize that from what you have heard that as Mrs. Duncan sits in this courtroom today the law clothes her in the presumption of innocence?

A. Yes.

Q. She has entered a plea of not guilty to the charges contained in this indictment, and the law says she is presumed to be innocent. Do you feel that you could afford her the benefit of that presumption of the law if you are accepted as a juror in this case?

A. Yes.

Q. And if you are accepted as a juror in this case would you require the prosecution to prove to your satisfaction, to a moral certainty and beyond a reasonable doubt her guilt?

A. Yes.

Q. Let's assume that you are accepted as a juror and you heard the evidence in this case and you have retired to the jury room, you have discussed the evidence fully with your fellow jurors, you have weighed in the light of the instructions upon the law that will be given to you by His Honor, and you say to yourself, "Well, I conscientiously have a reasonable doubt based upon this evidence and the law as given to me by the court of Mrs. Duncan's guilt." Under those circumstances would you hesitate to return into this court with a verdict of not guilty?

[fol. 252] A. No, I wouldn't.

Q. I think that you understand from what we said yesterday that this trial is likely to be a protracted one?

A. Yes.

Q. And may last four weeks, may last longer. When you retire to the jury room to deliberate, of course, you won't get to go home. Let's assume that you are accepted as a juror in this case and you have retired to the jury room and you have deliberated over the guilt or innocence of Mrs. Duncan and you entertain a reasonable doubt concerning her guilt. Your fellow jurors have a contrary opinion. You have been on trial for many weeks. The jury has been out deliberating for many hours. Would you be apt to sur-

render your conscientious opinion and vote for a verdict of guilty merely to bring an end to this trial and so you could get it over with and get home?

A. No, I wouldn't.

[fol. 253] Q. In other words, as long as you yourself entertained a reasonable doubt as to the guilt of Mrs. Duncan, you would continue to vote for a verdict of not guilty, is that correct?

A. Yes.

Q. And you would have no hesitancy in doing that?

A. No.

Q. And you wouldn't hesitate to do that, even if you felt that you might be subject to criticism by some of your friends or acquaintances, would you?

A. No.

Q. Now, Mrs. Arend, do you subscribe to any newspapers?

A. Yes.

Q. May I inquire what papers?

A. Los Angeles Times.

Q. And any of the local papers?

A. No, just a weekly, Moorpark Enterprise.

Q. Moorpark——

A. Enterprise, a weekly.

Q. That is a weekly paper, not a daily, is that right? You don't subscribe to the local paper published here in Ventura; that is, the Ventura Free-Press?

A. No.

Q. Nor the Oxnard Courier?

A. No.

[fol. 254] Q. Do you sometimes listen to newscasts on the radio?

A. Once in a great while. We have it in the car.

Q. And do you sometimes listen to newscasts on television?

A. Occasionally.

Q. Have you ever read or heard anything about this case prior to the time that you came into court yesterday?

A. I have heard snatches of my husband and dad discussing it.

Mr. Sullivan: Would you read that, Mr. Reporter.

(Whereupon the record was read as follows:

"A. I have heard snatches of my husband discussing it.")

The Prospective Juror: And my dad.

Mr. Sullivan:

Q. In other words, your husband and your father have discussed it? You heard them say something about it?

A. I was doing housework and I didn't pay too much attention to it.

Q. All right. You remember when you were served with a summons to appear for jury duty?

A. Yes.

Q. Was any information given to you as to what case you were to report for jury duty on?

A. No.

[fol. 255] Q. You didn't know?

A. No.

Q. Were you merely served with a summons and knew nothing about what the case was, until you came down to court yesterday?

A. Well, I heard on TV that Mrs. Duncan was going to trial on such a date, and I thought it might be that. I didn't know.

Q. You just merely assumed that it might be?

A. Yes.

Q. But nobody told you that that was the case that you were being summoned on?

A. No.

Q. Well, from what you—withdraw that for a moment. Did you yourself read anything about the case?

A. No, I haven't.

Q. Did you hear any newsbroadcast by way of radio or television concerning this particular case?

A. Just the one occasion I told you.

Q. The what?

A. Just the one time that I told you about.

Q. That was a radio broadcast?

A. TV, television.

Q. Television broadcast. Do you remember about how long ago that was?

A. About five or six days.

[fol. 256] Q. Just in the last five or six days?

A. Yes.

Q. Did you see and hear any television broadcasts where Mr. Gustafson appeared on television and made some statements?

A. No, I did not.

Q. You didn't catch that one?

A. No.

Q. Well, from what you have heard by way of radio broadcasts or what you have heard your father and your husband say—incidentally, did you hear any other people speak about this case besides your father and your husband?

A. No, not that I recall.

Q. From what you have heard, regardless of the source from which you heard it, did you yourself form any opinion concerning the guilt or innocence of Mrs. Duncan?

A. No, I haven't.

Q. And as you sit in the jury box today, I take it then that you have no opinion whatsoever regarding her guilt or her innocence, is that correct?

A. That is right.

Q. And let's assume that you yourself were the person charged with the identical offense that is charged against Mrs. Duncan and that in place of Mrs. Duncan seated at the counsel table here, it was you, and let's assume I was the lawyer who was employed to defend you, and all you wanted was a trial at the hands of 12 men and women who [fol. 257-258] would be absolutely unbiased and unprejudiced and all you wanted them to do was to return a fair and impartial verdict, do you think that you could get such a trial at the hands of 12 men and women of your present frame of mind?

A. Yes, I do.

Q. And just one more question: Do you know of any reason whatsoever why you could not give to Mrs. Duncan a fair and impartial trial?

A. No, I don't.

Mr. Sullivan: Thank you. Pass Mrs. Arend for cause.

The Court: All right. It is after 12:00 o'clock. The Court will adjourn until 1:45.

(Whereupon, at 12:03 o'clock P.M., the Court recessed proceedings until 1:45 o'clock P.M.)

[fol. 259] Ventura, California, February 17, 1959: 1:45 o'clock P.M.

The Court: These two members of this panel are excused: Abner A. Poteet and Mrs. Parr, Mrs. Willis Parr. You are excused.

Mr. Gustafson: Does the record show that by stipulation?

Mr. Sullivan: Yes, Your Honor.

The Clerk: By stipulation.

The Court: Yes. That is done by stipulation.

Mr. Gustafson: So stipulated.

Mr. Sullivan: So stipulated, Your Honor.

Voir Dire examination.

Mr. Gustafson: Ladies and gentlemen, it is now my opportunity to ask you some questions pertaining to your qualifications as jurors in the same fashion that Mr. Sullivan has for the last day and a half. I will try to be relatively brief about these, but as Judge Blackstock explained, it is the right and the duty of attorneys to ask questions concerning these matters to determine whether the jurors are qualified to sit in a case of this nature.

First of all, let me ask you, Mr. Hood, do you know Mr. Sullivan?

The Prospective Juror: No, sir.

Mr. Gustafson: Do you know Frank Duncan?

[fol. 260] A. No.

Q. Do you know Mrs. Duncan?

A. No.

Mr. Gustafson: How about you, Mr. Porter?

Mr. Porter: No, just pictures, is all.

Mr. Gustafson: Mr. Metcalf?

Mr. Metcalf: No, sir.

Mr. Gustafson: Mrs. Arend?

Mrs. Arend: No.

Mr. Gustafson: Mrs. Saavedra?

Mrs. Saavedra: No, I don't.

Mr. Gustafson: Mr. Gosney?

Mr. Gosney: No.

Mr. Gustafson: Mrs. Kennedy?

Mrs. Kennedy: No, sir.

Mr. Gustafson: Mr. York?

Mr. York: No.

Mr. Gustafson: Mr. Chambers?

Mr. Chambers: No, sir.

Mr. Gustafson: Mrs. Osburn?

Mrs. Osburn: No, sir.

Mr. Gustafson: Mr. Spangler?

Mr. Spangler: No, sir.

Mr. Gustafson: Mr. Batten?

Mr. Batten: No, sir.

Mr. Gustafson: No one knows any of these three persons. [fol. 261] Now, Mr. Sullivan alluded to the fact that he was an attorney from Los Angeles. He asked whether in light of that fact there would be anything in that which might possibly cause you to be biased or prejudiced against his client, Mrs. Duncan, by reason of the fact that a Los Angeles attorney was representing her, and each of you, I believe, said, "No."

I want to ask the opposite of that question, whether in view of the fact that Mrs. Duncan is being represented by the very famous and capable Mr. Sullivan, whose abilities, no doubt, are equal to or surpass those of someone like the fictional Perry Mason on television, whether by reason of that fact you will be unfair to the case of the People of the State of California in that you will believe that if Mr. Sullivan is representing Mrs. Duncan, she must necessarily be innocent and the District Attorney must necessarily be wrong?

Any such idea in your mind, Mr. Chambers?

Mr. Chambers: No.

Mr. Gustafson: How about you, Mr. York?

Mr. York: No.

Mr. Gustafson: Mrs. Kennedy?

Mrs. Kennedy: No, sir.

Mr. Gustafson: Would you, Mrs. Osburn, be in any way prejudiced against my case?

Mrs. Osburn: No.

[fol. 262] Mr. Gustafson: As District Attorney, because

Mrs. Duncan is being represented by a very capable Mr. Sullivan?

Mrs. Osburn: No.

Mr. Gustafson: How about you, Mrs. Arend?

Mrs. Arend: No, I wouldn't.

Mr. Gustafson: Mr. Hood?

Mr. Hood: No.

Mr. Gustafson: Mr. Spangler?

Mr. Spangler: No, sir.

Mr. Gustafson: Mr. Batten?

Mr. Batten: No, sir.

Mr. Gustafson: Mr. Porter?

Mr. Porter: No, sir.

Mr. Gustafson: Mr. Gosney?

Mr. Gosney: No.

Mr. Gustafson: Mrs. Saavedra?

Mrs. Saavedra: No.

Mr. Gustafson: Mr. Sullivan also asked you whether you would give any more credence to the testimony of a person who was a law enforcement officer merely and simply because he was a law enforcement officer. Let me ask you this: Do you have any prejudice against a person because he is a law enforcement officer? Mrs. Saavedra, do you?

Mrs. Saavedra: No.

Mr. Gustafson: How about you, Mr. Hood?

Mr. Hood: No.

[fol. 263] Mr. Gustafson: Mr. Spangler?

Mr. Spangler: No, sir.

Mr. Gustafson: Mr. Gosney, would you be inclined to give less credence to the testimony of a person who happened to be a law enforcement officer?

Mr. Gosney: No, certainly not.

Mr. Gustafson: How about you, Mr. Batten?

Mr. Batten: No, sir.

Mr. Gustafson: Would you, Mr. Chambers judge——

Mr. Chambers: No.

Mr. Gustafson: —the testimony of a law enforcement officer by exactly the same rules that Judge Blackstock tells you are applicable to all witnesses who testify?

Mr. Chambers: No, it wouldn't make any difference.

Mr. Gustafson: In other words, in weighing and in judging the testimony of a law enforcement officer you would apply the same rules which are applicable to all witnesses?

Mr. Chambers: Yes, sir.
Mr. Gustafson: You, too, Mr. York?
Mr. York: Yes.
Mr. Gustafson: Mrs. Kennedy?
Mrs. Kennedy: Yes.
Mr. Gustafson: Mr. Metcalf?
Mr. Metcalf: Yes.
Mr. Gustafson: Mr. Porter?
Mr. Porter: Yes, sir.
[fol. 264] Mr. Gustafson: Mrs. Arend?
Mrs. Arend: Yes.

[fol. 265] Q. Mr. Metcalf, Mr. Sullivan has said to you prospective jurors several times that you recognize that there are two sides to a lawsuit and, of course, that means that we wouldn't be here if everybody agreed on what the facts were. There will be conflicting evidence, or there is little likelihood that there would be any trial, one side producing evidence indicating that the facts are such and such, and the other side producing evidence indicating the facts are so and so, so that you have a conflict. And you realize, I assume, Mr. Metcalf, that it is your duty as a juror, if you are selected to serve here, to determine what is the truth on the basis of that evidence, and perhaps it will be necessary, in doing that, to reject some evidence as not being the truth and to accept other evidence as being the truth. Are you willing, Mr. Metcalf, to assume that duty as a juror and attempt to ascertain what the true facts are, from the evidence as presented to you?

A. I would to the best of my knowledge, yes.
Q. You would. And how about you, Mr. Spangler?
A. Yes, sir.
Q. And Mrs. Ahrend?
A. Yes.
Q. And Mr. Hood?
A. Yes.
Q. Mrs. Osborn?
A. Yes.
[fol. 266] Q. Mr. Batten?
A. Yes.
Q. Mr. Gosney?
A. Yes.
Q. Mr. Porter?

A. Yes.
Q. Mrs. Saavedra?
A. Yes.
Q. Mr. Chambers?
A. Yes.
Q. Mr. York?
A. Yes.
Q. Mrs. Kennedy?
A. Yes.
Q. In other words, you would all, I take it then, do your best to sift this evidence and weigh it and come up with what seems to you in your mind to be the truth, is that correct?
A. (The prospective jurors nodded affirmatively.)
Q. Now, would you be willing, after you have listened to the evidence, to decide what you think should be the verdict, on the basis of that evidence according to the rules of law that Judge Blackstock will give you just before you retire to the jury room to deliberate? Are you willing to do that, Mr. York?
A. Yes, sir.
[fol. 267] Q. And you, Mr. Hood?
A. Yes, sir.
Q. Mr. Spangler?
A. Yes, sir.
Q. Mr. Batten?
A. Yes.
Q. Mr. Gosney?
A. Yes.
Q. Mr. Chambers?
A. Yes.
Q. Mr. Metcalf?
A. Yes.
Q. Mrs. Kennedy?
A. Yes.
Q. Mr. York?
A. Yes.
Q. Mrs. Saavedra?
A. Yes.
Q. Mrs. Osborn?
A. Yes.
Q. Mrs. Ahrens?
A. Yes.

Q. Now, Mr. Sullivan has also alluded to the fact, of course, and so has Judge Blackstock, that in this case it is necessary for the People—and, incidentally, when that term is used, and it has been used heretofore, when we refer [fol. 268] to the People, that is a shorthand way of saying the People of the State of California; in other words, the prosecution, the side for which I am the attorney. The title of this case is the People of the State of California versus Elizabeth Duncan, and when we are talking about the People, we are talking about my side of the case.

Are you willing, Mr. Batten, to accept the fact that while the People must prove its case against the defendant beyond any reasonable doubt, if there is to be a verdict of guilty, that we don't have to prove the case beyond any doubt whatever? If the Judge tells you that that is the law, will you accept that?

A. Yes, sir.

Q. In other words, Mr. Batten, if the Judge tells you something, which I think you already know, that when we are in a courtroom here, hearing evidence with respect to something that happened before, where you weren't present and I wasn't present and the Judge wasn't present and Mr. Sullivan wasn't present and the other jurors weren't present, that we are hearing it from the lips of witnesses and from other evidence presented to you, and that in the light of the fact that we weren't personally there and observed and saw these things with our own eyes and ears, there is always the possibility of some doubt and therefore the prosecution isn't required to prove any case beyond all doubt but simply beyond a reasonable doubt?

A. Yes, sir.

[fol. 269] Q. You would accept that?

A. I would.

Q. Mr. Metcalf, if the Judge tells you that that is the rule, will you accept that and not require me to prove guilt beyond any doubt whatever before you vote guilty?

A. Except the evidence on a reasonable doubt.

Q. In other words, if I don't prove it beyond a reasonable doubt, you would vote not guilty but if I prove it beyond a reasonable doubt but not beyond any doubt, you will vote guilty, is that correct?

A. Yes.

Q. Is that concept agreeable to you, Mrs. Arend? Do you have any difficulty with that?

A. No, I don't think so.

Q. You would be perfectly willing to acknowledge and accept the fact and go by the rule of law that I am not required to prove the case beyond any doubt whatever but only beyond a reasonable doubt?

A. Beyond a reasonable doubt, if the Judge instructs us.

Q. Yes. Mr. Chambers, are you willing to accept the proposition of law given to you by the Judge, that it is impossible in all things in human affairs to prove something beyond any doubt whatever, and therefore the prosecution has the burden only of proving a defendant guilty beyond a reasonable doubt?

[fol. 270] A. I do.

Q. Mr. York?

A. I will go along with that.

Q. Mrs. Kennedy?

A. Yes, sir.

Q. How about you, Mr. Porter?

A. Yes.

Q. Do you think that is all right?

A. Yes.

Q. Do you have any doubt about it, Mr. Porter?

A. No. I think that is the only way it can be.

Q. Pardon?

A. I think it is the only way it can be.

Q. Yes, that is the only way it can be. And you, Mrs. Saavedra?

A. Yes.

Q. And how about you, Mr. Spangler?

A. Yes.

Q. And Mrs. Osborn?

A. Yes.

Q. Did I ask you, Mr. Hood?

A. Yes.

Q. Now talking again about this business of proving a thing beyond a reasonable doubt, let me ask you this, Mrs. Arend: We have already said, Mr. Sullivan has said and I have said, and of course we wouldn't be here if there weren't two sides to this, that there will be conflicting [fol. 271] evidence. Would the mere fact, standing alone, that there will be a conflict of evidence, some evidence this

way and some evidence that way, cause you to say, "Well, that alone creates a reasonable doubt," regardless of the weight of the evidence, "Just because there are contradictory stories, therefore I have a reasonable doubt"? Would you throw up your hands and say, "That is it"?

A. I don't know.

Q. Well, let me put it this way: I think you answered me before that you would attempt to resolve, to decide in your mind, which of the evidence is true and which of the evidence you should reject, and to try to arrive at the truth by accepting some evidence and rejecting some, if that is necessary and if that is called for. Now, some people might say to themselves, "Well, as long as there are two different stories, one person saying this and one person saying that, therefore automatically there is a reasonable doubt in my mind." You wouldn't do that, would you Mrs. Arend?

A. No, I don't believe so.

Q. In other words, the mere fact that there may be conflicting evidence, wouldn't cause you to say automatically therefore, "The prosecution hasn't proved its case beyond a reasonable doubt, because as long as there are two sides to it, I am going to have a reasonable doubt"? That won't be your attitude, would it?

[fol. 272] A. No.

Q. How about you, Mr. Chambers?

A. I would go along with that, too.

Q. You would go along with that?

A. (The prospective juror nodded affirmatively.)

Q. That is, you realize that that is your whole purpose here as a juror, is to resolve any conflicts in the evidence, to try to ascertain what the truth is, what is to be accepted and what is to be rejected, so that the mere fact that there are conflicts in the evidence won't cause you automatically to say therefore there is a reasonable doubt?

A. No, sir.

Q. Mr. Spangler, do you have any difficulty with that concept?

A. I don't think so.

Q. You are willing to accept it?

A. Yes, sir.

Q. And you would not, simply because there are two sides to the story, say, "Well, that automatically creates a

reasonable doubt and nobody can be guilty *is* there are two sides to the story"?

A. Yes, sir.

Q. Mr. Hood, do you understand that?

A. Yes, sir.

Q. And you would be willing to do your best to resolve and decide the differences in the conflicts in the evidence [fol. 273] to arrive at the truth?

A. Yes, sir.

Q. The mere fact that there might be contradictory evidence in some particular point or possibly on all points wouldn't cause you to throw up your hands and say, "Well, automatically that means there is a reasonable doubt and a person can't possibly be guilty"?

A. No.

Q. Mr. Porter?

A. No. I would go along with that all right.

Q. You would go along with that. How about you, Mrs. Kennedy?

A. Yes.

Q. And you, Mr. Metcalf?

A. Yes.

Q. And you, Mr. York?

A. Yes.

Q. And you, Mr. Gosney?

A. Yes.

Q. How about you, Mrs. Saavedra?

A. Yes.

Q. Mrs. Osborn?

A. Yes.

Q. Mr. Batten?

A. Yes.

Q. I certainly want to say to you ladies and gentlemen, [fol. 274] that if you have any doubts about these things, simply because I'm not asking each of you individually each one of those questions but just am asking one person or two particularly, and then asking the rest of you whether you feel the same way, if you don't feel the same way, if you have any questions about it, I would certainly appreciate it if you would ask me to clarify it or to express how you do feel about it, because you must realize that we are trying to get a jury which is fully qualified.

Mr. Spangler, the Judge is going to tell you that you are to decide this case, if you sit as a juror, solely on the basis of the evidence presented here in court. Are you willing to follow that instruction and to disregard any sympathy that may be created in your mind for the defendant, Elizabeth Duncan, in reaching your verdict?

A. Yes, sir.

[fol. 275] Mr. Gustafson: So that regardless of how much sympathy might be engendered for her you will, nevertheless, decide it on the facts and the law?

The Prospective Juror: Yes.

Mr. Gustafson: Regardless of what those consequences may be?

The Prospective Juror: Yes.

Mr. Gustafson: Could you do that?

The Prospective Juror: Yes.

Mr. Gustafson: How about you, Mrs. Kennedy? Sometimes it is a difficult task to set aside sympathy and decide a thing solely on the basis of evidence and the law. Will you be able to do that?

Mrs. Kennedy: Yes, sir.

Mr. Gustafson: Will you do your best to do it?

Mrs. Kennedy: Yes, sir.

Mr. Gustafson: Mrs. Arend, could you?

Mrs. Arend: Yes.

Mr. Gustafson: (Continuing) Set aside any sympathy for Mrs. Elizabeth Duncan in deciding whether she is guilty or not guilty of murder?

Mrs. Arend: Yes, I will do my best.

Mr. Gustafson: Could you do it, Mrs. Osburn?

Mrs. Osburn: I sure can.

Mr. Gustafson: Can you?

Mrs. Saavedra: Yes.

[fol. 276] Mr. Gustafson: How about you Mr. Porter?

Mr. Porter: Yes, sir.

Mr. Gustafson: You would be willing to do it?

Mr. Porter: Right.

Mr. Gustafson: Do you have any hesitancy in approaching the case with that frame of mind, Mr. York, that you will decide it solely and exclusively on the basis of the evidence in complete disregard of any sympathy that you might have for Elizabeth Duncan?

Mr. York: I'll do my best.
Mr. Gustafson: Mr. Gosney?
Mr. Gosney: Yes.
Mr. Gustafson: Mr. Batten?
Mr. Batten: Yes.
Mr. Gustafson: Mr. Hood?
Mr. Hood: Yes.
Mr. Gustafson: Incidentally, along that line, let me ask you this, Mr. Gosney: Mr. Sullivan, you see, has a client sitting here in person, Mrs. Duncan. I don't. I represent, of course, as I told you before, the People of the State of California, which isn't any particular person. Would you be more partial toward the side of Mr. Sullivan simply because he has as his client a particular individual person and I don't have any such individual person sitting here?
Mr. Gosney: No, sir.
[fol. 277] Mr. Gustafson: As my client?
Mr. Gosney: I would be impartial.
Mr. Gustafson: Would that cause you, Mrs. Osburn—
Mrs. Osburn: No.
Mr. Gustafson:—to be more partial to him because he has got somebody that is sitting there as a person and I don't?
Mrs. Osburn: No, sir.
Mr. Gustafson: How about you, Mrs. Arend?
Mrs. Arend: No.
Mr. Gustafson: Mr. Hood?
Mr. Hood: No.
Mr. Gustafson: Mr. Spangler?
Mr. Spangler: No, sir.
Mr. Gustafson: Mr. Batten?
Mr. Batten: No, sir.
Mr. Gustafson: Mr. Porter?
Mr. Porter: No, sir.
Mr. Gustafson: Mr. Metcalf?
Mr. Metcalf: No.
Mr. Gustafson: Mr. Chambers?
Mr. Chambers: No, sir.
Mr. Gustafson: Mrs. Kennedy?
Mrs. Kennedy: No, sir.
Mr. Gustafson: Mr. York?
Mr. York: No, sir.

[fol. 278] Mr. Gustafson: Now, Mr. Chambers, in this case if Elizabeth Duncan is found guilty of the charge against her of murder and if she is found guilty of murder in the first degree, then one of two possibly penalties could be inflicted upon her is the death penalty in the gas chamber. Do you sustain a conscientious opinion regarding the death penalty which would preclude you from voting guilty of murder in the first degree?

Mr. Chambers: No, sir.

Mr. Gustafson: Mr. Gosney?

Mr. Gosney: No, sir.

Mr. Gustafson: Mr. York?

Mr. York: No.

Mr. Gustafson: Mr. Batten, I want to ask you specifically and repeat the question again because, of course, it is exceedingly important. If Elizabeth Duncan should be found guilty of murder in the first degree, it would mean that one of the two possible penalties that could be inflicted upon her would be death in the gas chamber. Do you entertain any conscientious opinion respecting the death penalty which would, because of that, preclude you from finding her guilty?

Mr. Batten: No, sir.

Mr. Gustafson: Do you understand that question fully, Mr. Spangler?

Mr. Spangler: Yes, sir.

Mr. Gustafson: Do you entertain such an opinion regard-
[fol. 279] ing the death penalty?

Mr. Spangler: No, sir.

Mr. Hood: No, sir.

Mr. Gustafson: I will ask you again, Mrs. Kennedy, assuming, or if Mrs. Elizabeth Duncan is found guilty of murder in the first degree, one of the two possible penalties being death in the gas chamber, could you conscientiously sit as a juror in this case and find her guilty of first degree murder, knowing that that is one of the penalties, or do you have a conscientious opinion regarding the death penalty that would preclude you from finding her guilty under those circumstances?

Mrs. Kennedy: I have no opinion against it.

Mr. Gustafson: Mr. Metcalf, do you fully understand that question?

Mr. Metcalf: Yes, sir.

Mr. Gustafson: Do you entertain such a conscientious opinion concerning the death penalty as would preclude you from voting her guilty of first degree murder?

Mr. Metcalf: No, if that is the law of the state, I would go along with it.

Mr. Gustafson: You would go along with it. Mr. Porter?

Mr. Porter: That's the way I feel also.

Mr. Gustafson: Mrs. Saavedra?

Mrs. Saavedra: That's the law.

[fol. 280] Mr. Gustafson: You would go along with it?

Mrs. Saavedra: Yes.

Mr. Gustafson: Of course, I want to make sure that even though you recognize that this is the law, that the death penalty is one of the two possible punishments for first degree murder, I want to make sure that you understand that some jurors could nevertheless, have a conscientious opinion against the death penalty, against that law, to the point, where because of their opinion and because of not wanting to see anybody put to death in the gas chamber would say, "Well, I will not vote for a verdict which could carry the death penalty." You could, Mr. Metcalf, as I understand it, vote for a verdict which could carry that penalty?

Mr. Metcalf: Yes, I could.

Mr. Gustafson: And you, Mr. Batten?

Mr. Batten: Yes, I could.

Mr. Gustafson: You, Mrs. Saavedra?

Mrs. Saavedra: Yes.

Mr. Gustafson: How about you, Mrs. Osburn?

Mrs. Osburn: Yes.

Mr. Gustafson: You could?

Mrs. Osburn: Yes.

Mr. Gustafson: Mrs. Arend?

Mrs. Arend: Yes, I could.

Mr. Gustafson: Let me ask you this, Mrs. Osburn: [fol. 281] Would your answer be any different; in other words, would you believe that the death penalty should not be applicable under these circumstances, regardless of what the law might be; that is, assuming that Elizabeth Duncan is found guilty of murder in the first degree under the evidence presented in this case and under the law as given

to you by Judge Blackstock, but that she was guilty of murder in the first degree, not because she, herself, did any killing of Olga Duncan, but because she advised or encouraged somebody else to do it, and was thus guilty of first degree murder, although, not herself doing the killing, under those circumstances would you be unwilling to apply the death penalty?

Mr. Sullivan: Just a moment.

Mrs. Osburn: No.

Mr. Sullivan: I'm going to object to that on the ground that it is an attempt to have the jury prejudge the evidence.

The Court: I can't see it that way, Mr. Sullivan. I don't see there is any attempt to have the juror or any juror to prejudge the evidence. The objection is overruled.

Mr. Gustafson: Mrs. Arend, did you understand the full import of my question; that is, assuming that you did find Mrs. Sullivan guilty of first degree murder and that you so found on the basis of the evidence not that she, herself, killed somebody, but that she encouraged somebody [fol. 282] else to kill someone, would you under those circumstances entertain a conscientious opinion regarding the death penalty which would preclude you from imposing it on anyone who didn't actually herself do the killing?

Mrs. Arend: No.

Mr. Gustafson: Mrs. Duncan. The court reporter tells me I used the wrong name there.

Did you understand I was talking about Mrs. Duncan?

Mrs. Arend: Yes.

The Court: Mr. Gustafson, when I overruled that objection by Mr. Sullivan, I assumed that you were, in effect, asking the question that, "If it appears from the evidence——"

Mr. Gustafson: Yes.

The Court: But Mrs., the defendant——

Mr. Gustafson: Duncan.

The Court: Mrs. Duncan didn't do any killing, but she advised somebody else to do it; that is what you meant?

Mr. Gustafson: Yes.

The Court: That if it appears from the evidence?

Mr. Gustafson: Yes.

Do you understand that, Mr. Hood?

That is, if it appears from the evidence and you are satisfied of the fact that she did not personally kill anyone,

but that the facts were that she did advise or encourage somebody else to kill Olga Duncan, and then the judge in-
[fol. 283] structs you that under the law, certain circumstances being true, Mrs. Duncan could be guilty of first degree murder, and you do so find her guilty of first degree murder, would the fact that she did not personally kill somebody preclude you from imposing the death penalty if you otherwise thought that the death penalty was appropriate?

Mr. Hood: No, sir, it would not.

Mr. Gustafson: How about you, Mrs. Saavedra?

Mrs. Saavedra: No.

Mr. Gustafson: Do you understand that, Mr. Batten?

Mr. Batten: Yes, sir.

Mr. Gustafson: And you entertain in your mind no such distinction between one who personally did it and one who is guilty of exactly that same offense, murder in the first degree, but didn't personally do it?

Mr. Batten: That's right.

Mr. Gustafson: You don't draw any such distinction, do you, Mr. Gosney?

Mr. Gosney: No, sir.

Mr. Gustafson: With respect to the applicability of the death penalty to a person guilty of first degree murder, whether that person actually himself did it or caused somebody to do it?

Mr. Gosney: No, sir.

Mr. Gustafson: How about you, Mr. Chambers?

[fol. 284] Mr. Chambers: No, if the evidence proves that beyond a reasonable doubt, I wouldn't.

Mr. Gustafson: Mr. York?

Mr. York: Yes.

Mr. Gustafson: Do you have any hesitancy about that, Mr. Metcalf?

Mr. Metcalf: No, I wouldn't make any distinction between them.

Mr. Gustafson: Mrs. Kennedy?

Mrs. Kennedy: No, sir.

Mr. Gustafson: In other words, if you first find her guilty of first degree murder under the law and under the evidence, then you wouldn't draw any distinction between whether the person is guilty of first degree murder because

he, himself, committed the killing or whether he or she was guilty of first degree murder because of having somebody else do the killing?

Mrs. Kennedy: No, sir.

Mr. Gustafson: Is that right, Mr. Porter?

Mr. Porter: No, I would not.

Mr. Gustafson: How about you, Mrs. Osburn?

Mrs. Osburn: No.

Mr. Gustafson: Mrs. Arend?

Mrs. Arend: No.

Mr. Gustafson: Mr. Spangler, the defendant in this case charging murder—being charged with murder is a woman. [fol. 285] If you should find that she is guilty of first degree murder and then, as I think the court will later explain to you, there would be a separate trial following the trial on the issue of guilt wherein the penalty would be determined; it would not be determined at this stage of the proceedings——

The Court: Mr Gustafson, I want the reporter to read back the last two sentences propounded by Mr. Gustafson.

(Record read.)

The Court: That is all right.

Mr. Gustafson: So that you then in a trial which would immediately follow the trial on the issue of guilt you would hear evidence going to whether the penalty should be life imprisonment or death. What I want to ask you, Mr. Spangler, is would you feel that because the defendant is a woman she should not get the death penalty that you otherwise would think was appropriate if she were not a woman?

Mr. Spangler: No, sir.

Mr. Gustafson: How about you, Mr. Batten? Do you feel that despite the fact that you would otherwise think that the death penalty was the applicable penalty in a particular case, that you wouldn't give it in the case where the defendant was a woman?

Mr. Batten: No, sir.

[fol. 286] Mr. Gustafson: How about you, Mr. Gosney?

Mr. Gosney: No, sir.

Mr. Gustafson: Mr. Chambers?

Mr. Chambers: No, sir.

Mr. Gustafson: Can you, Mr. York, conscientiously say that it would make no difference to you if you thought the

death penalty was inapplicable in a particular case, that the defendant was a woman?

Mr. York: I would make no distinction.

Mr. Gustafson: Mr. Hood?

Mr. Hood: No.

Mr. Gustafson: Mr. Porter?

Mr. Porter: No, sir.

Mr. Gustafson: Mr. Metcalf?

Mr. Metcalf: No.

Mr. Gustafson: I will ask the woman. Mrs. Kennedy?

Mrs. Kennedy: No, it would make no difference.

Mr. Gustafson: It would make no difference if you felt that the death penalty was proper in the particular case because of the circumstances of the crime, the defendant's background, and all other factors that the judge tells you to consider, then the fact that the defendant is a woman would not make any difference to you; is that correct?

Mrs. Kennedy: It would not.

Mr. Gustafson: Mrs. Saavedra?

Mrs. Saavedra: No, it would make no difference.

[fol. 287] Mr. Gustafson: Mrs. Osburn, would it make any difference to you?

Mrs. Osburn: No.

Mr. Gustafson: How about you, Mrs. Arend?

Mrs. Arend: No, it wouldn't.

Mr. Gustafson: Mr. Gosney, suppose that you are convinced by the evidence in this case beyond any reasonable doubt of the guilt of Mrs. Duncan. The prosecution has produced that evidence in court and it is sufficient by the standards given to you by Judge Blackstock to find her guilty because you are convinced beyond a reasonable doubt, and you do find her guilty and all the 11 other jurors find her guilty and the jury returns a verdict of guilty, and then you hear evidence on the issue of penalty and go out to deliberate once more, having already found her guilty of first degree murder now, would the fact that I proved the case beyond a reasonable doubt, but not beyond any possible doubt whatever, cause you to say that the death penalty cannot be applied in a case like that?

Mr. Gosney: No, sir.

Mr. Gustafson: Or you, Mr. Spangler, or do you have any state of mind which would say that if a person is guilty of first degree murder that, nevertheless, the death penalty

should not be imposed because the case hasn't been proved beyond any doubt whatever?

Mr. Spangler: I don't know whether I quite understand [fol. 288] that.

Mr. Gustafson: Well, in other words, Mr. Spangler, I think we have gone through this portion of it and I think you agreed that you would follow Judge Blackstock's instructions on the law, that if he told you that when you are convinced beyond a reasonable doubt of the defendant's guilt, then you should vote guilty; would you do that?

Mr. Spangler: Yes.

Mr. Gustafson: I think you also told me, Mr. Spangler, that you would accept the law and the instructions from the judge that tells you that by the very nature of human affairs nothing can ever be proved beyond any doubt whatever because this is an impossibility when we have a trial here to prove something beyond any doubt whatever and, therefore, I am not required to do that. I am only required to prove it beyond a reasonable doubt. Now, suppose that you are convinced beyond a reasonable doubt that Mrs. Duncan is guilty of first degree murder and so are all the 11 other jurors, and you return a verdict of guilty of first degree murder, and then after further evidence you go out and deliberate on the punishment. Will you be in the frame of mind that you wouldn't possibly vote for a death penalty in any case where the proof of the crime is not beyond any doubt whatever; in other words, will you be willing to accept the verdict of guilty and apply and determine the penalty on the basis of her guilt as you previously found it? [fol. 289] Mr. Spangler: Yes, sir.

[fol. 290] Q. You won't say at that stage of the game, "of course, well, I voted her guilty because I was convinced beyond a reasonable doubt, but now that we are on the penalty I never will impose the death penalty, unless the guilt is proved beyond any doubt whatsoever"? You won't do that, will you?

A. No.

Q. Would you, Mr. Hood?

A. No.

Q. How about you, Mr. Batten?

A. No, sir.

Q. Is that concept confusing to you? Do you understand what the question is in that?

A. Yes, I understand it.
Q. You understand it?
A. That is right.
Q. And Mr. Chambers?
A. Yes, sir.
Q. Mr. York?
A. Yes.
Q. Mrs. Kennedy?
A. Yes.
Q. So that you are willing to determine the issue of penalty, if Mrs. Duncan is found guilty, without saying that you cannot vote anybody, vote the death penalty for anybody, unless the proof to you is beyond any doubt whatever? You won't say that?
[fol. 291] A. No, sir.
Q. Mr. Metcalf?
A. Well, I think it would have some bearing on me, the weight of the evidence that was presented on the case.
Q. Let's say, Mr. Metcalf—let me first say—do you understand that the first part of this case will be devoted simply to whether Mrs. Duncan is guilty or innocent?
A. I understood that.
Q. And then suppose at the conclusion of that, under the evidence and the law as given to you by Judge Blackstock, you are convinced, and so is every other juror, you are convinced beyond a reasonable doubt that she is guilty of first degree murder?
A. Yes.
Q. Then you come back in and you hear more evidence, which concerns not her guilt of murder but with respect to what the penalty should be. You hear evidence about her background and so forth. Then you go out to deliberate on the penalty. Remember that you have already at this point found her guilty of first degree murder.
A. Yes.
Q. Now, would you be disposed at that point of the proceeding to say, "Well, because the prosecution proved her guilty only beyond a reasonable doubt but not beyond any doubt whatever, therefore I won't vote for the death penalty under any circumstances"?
[fol. 292] A. Well, no.
Q. You wouldn't do that?
A. I wouldn't do that, no.

Q. In other words, having once found the defendant guilty of first degree murder, your determination of whether the death penalty should be applied will not be rested on any basis of the degree to which I have proven her guilty in the first instance? It will be based on other factors of her history and background and so on, will it not?

A. That is right.

Q. Mr. Porter, do you understand that?

A. Yes, sir.

Q. And do you have any quarrel with this proposition?

A. No, I don't.

Q. And you would not then, as I understand it, Mr. Porter, refuse to vote a death penalty simply because the proof may not have been beyond any doubt whatever?

A. No, I wouldn't.

Q. You would be satisfied and you would be able to apply either penalty, life or death, on the basis of the evidence which you hear at the penalty trial, provided that in the first instance she is found guilty of murder in the first degree beyond any reasonable doubt? Right?

A. Yes, on the basis of the evidence.

Q. Yes. Mrs. Saavedra, how about you?

[fol. 293] A. Yes.

Q. How about you, Mrs. Osborn?

A. Yes.

Q. You don't have any quarrel with that proposition?

A. No.

Q. And you don't have any mental reservations about that?

A. No.

Q. You would be perfectly willing to consider that case, if it should get that far, if Mrs. Duncan should be found guilty of first degree murder, and decide which of the two penalties should be applicable, without regard to the degree to which Mrs. Duncan was proved guilty in the first instance, is that right?

A. That is right.

Q. Mrs. Arend?

A. Yes.

Q. Does anybody have any difficulty with that proposition?

(No response.)

Q. Now let me ask you, because I can possibly think of all of the questions which might be pertinent here and the answers to which might reveal that you have some bias or prejudice one way or the other in this case—it could be any one of a number of things. It could be political beliefs. It could be personality factors. It could be some experience [fol. 294] in your own family. It could be all kinds of things that I can't possibly think of. So let me ask you individually, can you think of any reason why you might not be a fair and impartial juror so far as my side of the case is concerned, the case of the People of the State of California? Mrs. Kennedy?

A. No, sir.

Q. Mr. Metcalf?

A. No.

Q. Mr. Porter?

A. No.

Q. Mrs. Saavedra?

A. No.

Q. Mrs. Osborn?

A. No.

Q. Mrs. Arend?

A. No.

Q. Mr. Hood?

A. No, sir.

Q. Mr. Spangler?

A. No, sir.

Q. Mr. Batten?

A. No, sir.

Q. Mr. Gosney?

A. No.

Q. Mr. Chambers?

[fol. 295] A. No sir.

Q. Mr. York?

A. No, sir.

Mr. Gustafson: Pass for cause.

The Court: All right. You passed for cause, didn't you?

Mr. Sullivan: Yes, your Honor.

The Court: The peremptory is with the People.

Mr. Gustafson: We will excuse Mr. Chambers.

The Court: Who?

Mr. Gustafson: Mr. Chambers.

(The prospective juror was excused.)

The Court: Call another name.

The Clerk: Norman J. Roach, R-o-a-c-h.

The Court: Do you live in Oxnard, Mr. Roach?

The Prospective Juror: Yes, I do.

The Court: How long have you lived in Ventura County?

The Prospective Juror: Fifteen years.

The Court: What?

The Prospective Juror: Fifteen years.

The Court: Have you ever served on a jury here?

The Prospective Juror: No, sir.

The Court: You have been here in the courtroom all day today, haven't you?

The Prospective Juror: Yes, sir.

The Court: You were here yesterday?

[fol. 296] The Prospective Juror: Yes, sir.

The Court: You know realy what the case is all about?

The Prospective Juror: Yes.

The Court: All right, you may inquire.

Mr. Sullivan: Thank you, your Honor.

Q. Mr. Roach, may I inquire as to your business or occupation, please?

A. I own an automotive radiator repair shop.

Q. Is your repair shop located in Oxnard?

A. Yes, it is.

Q. You understand from what you have heard in this courtroom yesterday and today; that Mrs. Elizabeth Duncan, my client, is charged with the offense of murder, do you not?

A. Yes, I do.

Q. And you further understand that the alleged victim is a woman by the name of Olga Duncan?

A. Yes, I do.

Q. Now, is there anything about the nature of that charge that would cause you to entertain any bias or prejudice against Elizabeth Duncan?

A. No, sir.

Q. Assuming that the evidence in this case should disclose that Olga Duncan was the daughter-in-law of Eliza-

beth Duncan. Would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

[fol. 297] Q. Assuming that the evidence should further disclose that at the time Elizabeth Duncan met her death, she was then pregnant, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. Have you or has any member of your family or anyone near and dear to you, ever been the victim of a crime of assault or a crime of passion?

A. No, sir.

Q. Or ever had occasion to be a witness against any person charged with such a crime?

A. No, sir.

Q. Have you ever been connected in any manner whatsoever with any law enforcement agency?

A. Yes, sir.

Q. You yourself have?

A. No, sir.

Q. Well, I was asking you if you personally had.

A. No, sir.

Q. Well, then someone near and dear to you, is that right?

A. Yes.

Q. I take it then from your answer, that perhaps some relative of yours has been connected in some manner with some law enforcement agency, is that correct?

A. Yes, sir.

[fol. 298] Q. May I inquire as to how close this relationship was?

A. My stepmother.

Q. Your stepmother?

A. Yes.

Q. And in what capacity was she connected with a law enforcement agency?

A. She works in the District Attorney's office.

Q. In Ventura County?

A. Yes, sir.

Q. And may I inquire in what capacity she works in the District Attorney's office?

A. I do not really know. I just know she works there.

Q. Has she been employed in the District Attorney's office for some time?

A. Not too long.

Q. Not too long. I don't want to pry into your personal affairs, but may I ask you if the relationship between you and your mother-in-law—did you say?——

A. Stepmother.

Q. —oh, your stepmother—is one of a friendly nature?

A. Yes, sir.

Q. Incidentally, do you live at home with your stepmother?

[fol. 299] A. No, sir.

Q. I take it that you are married, are you?

A. Yes, sir.

Q. You have a family of your own?

A. Yes, sir.

Q. Well, would the fact that your stepmother is an employee of the District Attorney's office of Ventura County, cause you to entertain any bias or prejudice against Mrs. Duncan?

A. Not against Mrs. Duncan, no.

Q. Are you acquainted with Mr. Roy Gustafson, the District Attorney of this County?

A. Yes, I am.

Q. Have you known him for sometime?

A. Yes, sir.

Q. May I inquire as to how long you have known him?

A. About 11 years.

Q. And is that a close friendship between yourself and Mr. Gustafson?

A. Well, not what you would call real close. I mean I know him well enough to speak to and talk to and have conversations.

Q. You have been out at social functions that he has attended?

A. Lodge meetings and so on.

Q. And I take it that you have a high regard for Mr. [fol. 300] Gustafson, do you not?

A. Yes, I do.

Q. Well, do you think that by reason of your acquaintanceship with Mr. Gustafson, and coupled with the fact that your stepmother is an employee of his office, that we

of the defense would have to come before you with a little bit of a handicap of some kind?

A. Well, I'm afraid so.

Q. You think that you might have a tendency to lean toward Mr. Gustafson's side of this case, is that right?

A. Yes.

Q. You feel that it might be difficult for you to be fair and impartial in the matter?

A. Yes, it would be. I have talked to my stepmother, just vaguely mentioned the fact of the case, and she has looked into the———

The Court: Well, without wasting any time, may it be stipulated that he may be excused?

Mr. Gustafson: Yes, your Honor.

The Court: All right, you are excused.

(The prospective juror was excused.)

The Clerk: George W. Hawkins—H-a-w-k-i-n-s.

The Court: Where do you live, Mr. Hawkins?

The Prospective Juror: Oxnard.

The Court: What?

The Prospective Juror: Oxnard.

[fol. 301] The Court: How long have you lived there?

The Prospective Juror: Three and a half years.

The Court: Have you ever served on a jury here?

The Prospective Juror: No, sir.

The Court: You have been in attendance in the court all day today and yesterday?

The Prospective Juror: Yes, sir.

The Court: Do you know what this case is all about then?

The Prospective Juror: Yes, sir.

The Court: If you should be selected as a member of this jury, would you be absolutely fair and impartial? Could you be fair and impartial, if you were a member of the jury in this case?

The Prospective Juror: Yes, sir, I would try.

The Court: What?

The Prospective Juror: Yes, sir, I would try.

The Court: All right, you may inquire.

Mr. Sullivan: Thank you, your Honor.

Q. Mr. Hawkins, may I inquire as to what your business or occupation is?

A. I am a chef-manager for Thrifty Drug Company.

Q. Well, Mr. Hawkins, you have indicated, in response to the Court's question, that you are aware of the nature of the charge contained in this indictment against Mrs. Duncan?

A. Yes, sir.

Q. And I take it that you are also aware, from what [fol. 302] you have heard in this courtroom, that the alleged victim named in this indictment is one Olga Duncan?

A. Yes.

Q. Well, assuming that the evidence in this case discloses that Olga Duncan was the daughter-in-law of Elizabeth Duncan, my client. Would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. And assuming further that the evidence in this case should disclose that Olga Duncan at the time she met her death was then pregnant. Would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. Have you or has any member of your family or anyone near or dear to you ever been connected in any manner with any law enforcement agency?

A. No, sir.

Q. Have you or has any member of your family or anyone near and dear to you ever been the victim of a crime of assault or passion?

A. No.

Q. Or had occasion to be a witness against any person charged with such an offense?

A. No.

Q. You understand from what you have heard in this courtroom, that as Mrs. Duncan sits in court today, the law [fol. 303] clothes her with the presumption of innocence, do you not?

A. Yes.

Q. If you are accepted as a juror in this case, do you think that you could accord to her that presumption with which the law clothes her?

A. I don't think so.

Q. You don't think that you could?

A. No.

Q. Well, when you say that you don't think that you could, I assume that you are, or you mean to imply, that you have some opinion regarding her guilt in this case, is that it?

A. Yes.

Q. And is that opinion one that is unfavorable to Mrs. Duncan?

A. Very unfavorable.

Q. And that opinion is such that you feel that you could not fairly and impartially in this matter, is that right?

A. Yes, sir, that is correct.

Q. And you feel that you could not act fairly and impartially, even though the Judge were to instruct you as to the law applicable to this case?

A. I would do the best I could but I'm afraid I couldn't make it.

Q. You are afraid you couldn't make it?

A. Yes.

[fol. 304] Q. You don't feel that you, due to the opinion that you have, that you could honestly and conscientiously follow the law as given to you by His Honor? Is that the situation?

A. That is the way I feel, yes, sir.

Mr. Sullivan: The challenge is good.

Mr. Gustafson: Does that mean, in answer to Judge Blackstock's question which he first asked you when you came into the jury box, that you made a mistake in answering the question, that you told him that you could act fairly and impartially if selected as a juror?

The Prospective Juror: Yes, I made a mistake. What I meant was that I would do the best that I could.

Mr. Gustafson: You would do the best that you could?

The Prospective Juror: Yes.

Mr. Gustafson: But you feel that the best you could do would not be such that you would be fair and impartial?

The Prospective Juror: Yes.

Mr. Gustafson: I will accept the challenge for cause.

The Court: All right. The challenge is allowed. You are excused.

(The prospective juror was excused.)

The Court: Call another name.

The Clerk: Ellen E. Guthrie, G-u-t-h-r-i-e.

The Court: Mrs. Guthrie?

The Prospective Juror: Miss.

[fol. 305] The Court: Miss?

The Prospective Juror: Miss.

The Court: Where do you live, Miss Guthrie?

The Prospective Juror: Fillmore.

The Court: How long have you lived in this County?

The Prospective Juror: All my life.

The Court: You have been here the last two days, haven't you?

The Prospective Juror: Yes.

The Court: You know what this case is all about?

The Prospective Juror: Yes.

The Court: If you should serve on this jury in this case, could you be fair and impartial?

The Prospective Juror: Yes.

The Court: You may inquire.

Mr. Sullivan: Thank you, your Honor.

Q. Mrs. Guthrie—or it is Miss Guthrie, isn't it?

A. Yes.

Q. Pardon me. Miss Guthrie, may I inquire as to your business or occupation?

A. I'm a secretary at the high school.

Q. Secretary at the high school?

A. Yes.

Q. Is that in Fillmore?

A. That is in Fillmore.

Q. Have you had any previous experience as a trial [fol. 306] juror in criminal cases?

A. No.

Q. Well, Miss Guthrie, you understand from what you have heard in this courtroom yesterday and today the nature of the charge contained in this indictment against Mrs. Duncan, do you not?

A. Yes.

Q. Is there anything about the nature of that charge that would cause you to entertain any bias or prejudice against her?

A. No.

Q. You further understand that the alleged victim of this alleged murder is one Olga Duncan?

A. (The prospective juror nodded affirmatively.)

Q. Now, if the evidence in this case should disclose that Olga Duncan was the daughter-in-law of Elizabeth Duncan, would that cause you to entertain any bias or prejudice against Elizabeth Duncan?

A. No.

Q. And if the evidence should further disclose that Olga Duncan at the time she met her death was then pregnant, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. Have you or has any near relative or anyone near and dear to you ever been the victim of a crime of assault or [fol. 307] passion?

A. Not to my knowledge.

Q. You have no personal knowledge of that?

A. No.

Q. Or have they ever been called upon to be a witness against any person charged with such a crime?

A. Not to my knowledge.

Q. Is any member of your family, any relatives or any other person near and dear to you, connected in any manner with any law enforcement agency?

A. Not now.

Q. In the past someone has?

A. Yes.

Q. Was that a close relative of yours?

A. Well, my father's youngest brother.

Q. That was your uncle?

A. Yes.

Q. And he was at one time connected with some law enforcement agency?

A. That is right.

Q. May I inquire in what capacity?

A. He was on the Long Beach Police force for about 20 years or so.

Q. About 20 years?

A. Right.

Q. But I take it that he is no longer connected with [fol. 308] the law?

A. He is retired.

Q. He is retired at the present time?

A. That is right.

Q. Well, now, it is possible that some law enforcement officers may be called to the witness stand to testify as witnesses in this case. Would the fact that you had an uncle who was for 20 years connected with the law, with the Long Beach Police Department, cause you to give any greater credence to the testimony of the law enforcement officer than you would to any other witness?

A. Not because of his service, no.

Q. Is there any other reason why you might?

A. Well, I think that I would take into consideration the fact that he not only is under oath but it is his job and he can't afford to lie.

Q. In other words, you are of the opinion that because a law enforcement officer's job might be at stake, he could not possibly lie on the witness stand?

A. He probably wouldn't be telling any lies.

Q. He probably wouldn't?

A. That is right.

Q. In other words, you feel that he would be more apt to tell the truth than some other witness?

A. Well, yes.

Q. And for that reason you feel that you would accord [fol. 309] greater credence to his testimony than you would to that of some other witness?

A. Yes, because there would be a reason to do so.

Mr. Sullivan: Would you read that answer, Mr. Reporter.

The Reporter: "A. Yes, because there would be no reason to do so."

The Prospective Juror: Because there would be a reason to do so.

Mr. Sullivan:

Q. When you say there would be a reason to do so, there would be more of a reason for him to tell the truth than there would be for some other witness to tell the truth? Is that what you mean to say?

A. Yes.

Q. Well, let me ask you this: Do you subscribe to any newspapers?

A. Not myself. My family does.

Q. Do you live with your family?

A. I do.

Q. So that at the home where you now live, a newspaper is delivered there?

A. Yes.

Q. Is that a newspaper of daily circulation?

A. Yes. It is the Ventura Star-Free Press.

Q. The Ventura Star-Free Press. And, incidentally, what hours do you work at school?

A. Well, daytime.

[fol. 310] Q. You are home in the evenings quite often?

A. Well, sometimes.

Q. And do you have a radio at home? Do you sometimes listen to newscasts on the radio?

A. Well, headline editions mostly.

Q. What?

A. Headline editions.

Q. You are speaking of headline editions on the radio?

A. Right.

Q. But when you listen to these headline editions on the radio, you listen to the news broadcasts, the story that is being broadcast from time to time, do you not?

A. Well, yes, usually the ones that I listen to don't go into too many details.

Q. Well, but you do listen to the entire broadcast, or do you just listen to what you think is a headline?

Mr. Gustafson: I am going to object to that, your Honor. It is incompetent, irrelevant and immaterial.

The Court: Oh, I think so. I think that you are going a little too much into detail there.

Mr. Sullivan:

Q. Well, in addition to the radio broadcasts that you listen to, do you sometimes listen to news broadcasts that are conveyed over television?

A. No. We don't have a television.

Q. Has your family been subscribing to this newspaper, [fol. 311] the Ventura Free-Press, for some length of time?

A. Yes.

Q. At least since prior to the first of last December?

A. Yes.

Q. Have you read anything about this case in the paper?

A. Some.

Q. Did you read any articles in the newspaper which purported to relate the testimony of any of the witnesses who testified before the Grand Jury in this case?

A. I didn't read those articles in there entirely; no.

Q. You say that you didn't read them entirely?

A. No.

Q. Did you read part of them?

A. Usually the headlines on the first paragraph.

Q. Pardon?

A. The headlines in the first paragraph.

Q. Did you read any part of any newspaper article which purported to relate the testimony of Augustine Baldonado, who testified before the Grand Jury?

A. Not that I can remember.

Q. Did you read any part of any newspaper article which purported to relate the testimony of one Luis Moya before the Grand Jury?

A. Well, I can't remember the details, if I did.

Q. Do you remember whether you read it or not?

[fol. 312] A. No, I couldn't say.

Q. You couldn't say?

A. No.

Q. Did you read any articles which purported to relate a confession of either Augustine Baldonado or Luis Moya?

A. (The witness shook her head negatively.)

The Court: The answer is no. Speak up so that the Court Reporter can hear it.

The Prospective Juror: Well, he is asking me the same things. I am saying that I don't remember the details of reading, just exactly what it was. I may have seen it and I may not.

Mr. Sullivan:

Q. I am just asking you to refresh your recollection. Do you recall whether or not you read any of the articles which purported to relate any statements concerning this case by Mr. Gustafson, the District Attorney?

A. Well, I saw the headlines but I didn't take time to read it.

Q. Pardon?

A. I saw the headlines but I didn't take the time to read it.

Q. You just glanced at the headlines?

A. Yes.

Q. Are you acquainted with Mr. Gustafson?

A. Well, I know that he is District Attorney for the County, yes.

[fol. 313] Q. But are you acquainted with him personally?

A. No.

Q. Or with any of his deputies or any members of his staff?

A. Not to my knowledge.

Q. Well, in addition to what you might have read, whether it be headlines or part of an article concerning this case, have you discussed it with anyone?

A. No.

Q. Not at all?

A. No.

Q. You didn't discuss it among your family?

A. No.

Q. As a result of what you read or what you might have heard over the radio, did you yourself form any opinion regarding the guilt or innocence of Mrs. Duncan?

A. I don't know whether you would say an opinion but I did make an impression of this situation.

Q. You say that you made an impression?

A. Yes.

Q. Was that an impression that you had regarding the question of her guilt or innocence?

A. Yes.

Q. Was that impression unfavorable to Mrs. Duncan?

A. Yes.

Q. And do you still have that impression?

[fol. 314] A. Right.

Q. Is that impression such that you feel it might interfere with you acting fairly and impartially as a juror in this case?

A. No.

Q. You feel that you can completely set aside and disassociate from your mind the impression which you received in the past?

A. (The prospective juror nodded affirmatively.)

Mr. Gustafson: I object to that on the grounds that it is incompetent, irrelevant, immaterial and it isn't required that any juror set aside any opinion.

The Court: Yes. Just in that form, I will sustain the objection.

Mr. Sullivan:

Q. Do you feel that you can decide the guilt or innocence of Mrs. Duncan solely and exclusively from the evidence as you hear it in this courtroom?

A. Yes.

Q. And that you wouldn't allow anything that you might have read or heard about this case, outside of this courtroom, and other than what you hear from the witnesses in this courtroom, to influence your verdict one way or the other?

A. No.

Q. Well, let's assume that you yourself were charged with the identical offense charged against Mrs. Duncan in this indictment, that you were on trial here today, charged [fol. 315] with that offense, and let's go a little further and assume that I am defending you, and that you wanted to have the trial before a jury composed of 12 men and women who would be absolutely unbiased and unprejudiced and who would render an absolutely fair and impartial verdict. Do you feel that you could receive a trial in a fair and impartial verdict at the hands of a jury composed of men and women of your present frame of mind?

A. I don't know what you mean by "frame of mind," but if you mean my attitude toward the court, the fact that the thing would have to be proved on evidence in the court, yes.

Q. Well, you know what your own present frame of mind is, don't you? You know your own mind and I don't, isn't that right?

A. Well, I know my own judgment.

Q. All right. Let's say that you know your own judgment. Would you want to be tried by a jury composed of men and women of your own judgment?

A. Right.

Q. To use your own term?

A. That is right.

Q. You feel that if you had a trial at the hands of 12 people composed of individuals of your own judgment, that you would receive a fair and impartial trial, is that right?

A. Yes.

[fol. 316] Q. Do you know of any reason whatsoever why you could not give to Mrs. Duncan a fair and impartial trial?

A. No.

Mr. Sullivan: All right. Thank you, Miss Guthrie. I will pass for cause.

Mr. Gustafson:

Q. Miss Guthrie, you don't know Mr. Sullivan, Mr. Frank Duncan, or Mrs. Duncan?

A. No.

Q. You don't, I take it, have any prejudice against any law enforcement officers that would cause you to give less weight to their testimony than you otherwise would?

A. No.

Q. Would you act as a juror and do your duty as a juror in attempting to decide and to resolve evidence that is conflicting; that is, if you hear the case, there being two sides to the case, one side saying this and other side saying the other, you would do your best to ascertain what is the truth and what is not, is that right?

A. That is right.

Q. And the mere fact that there is such a conflict in the evidence, wouldn't cause you to throw up your hands and say automatically, "There is a reasonable doubt. Nobody can ever be convicted, if there are two sides to the story"?

A. No.

Q. You are willing then, as I take it, to try this case under the rules laid down to you by Judge Blackstock, and [fol. 317] you would not require me to prove the case beyond any doubt whatever but only beyond a reasonable doubt?

A. That is right.

Q. And in deciding the case, you would apply to the evidence the law as given to you by Judge Blackstock, is that right?

A. That is right.

Q. Whether you liked the law or didn't like the law?

A. That is right.

Q. So that if he told you that a person could be found guilty of first degree murder, if you find from the evidence that person encouraged or advised the commission of a murder, even though that person didn't himself commit the act of killing, you would follow that law?

A. Yes.

Q. In reaching a verdict in this matter, would you be willing to set aside any sympathy that might be engendered for Mrs. Duncan and decide it solely and exclusively on the basis of the evidence that you heard here in court?

A. I would.

Q. It wouldn't make any difference to you that she was a woman? Would you be sympathetic because of that and let that sympathy influence you in your verdict?

A. No.

Q. Do you have any conscientious opinion regarding the death penalty that would preclude you from voting a verdict of guilty of first degree murder to which the death [fol. 318] penalty is one of the two alternative penalties?

A. No.

Q. You are sure about that, because this is an important question?

A. Well, I wouldn't want to apply the death penalty promiscuously but if it were called for, then I would be for it, yes.

Q. Well, now since nobody is going to ask that the penalty be applied promiscuously but only because it is deserved, do you have a state of mind where if you believe that it is deserved in a case, that it would be and will be applied?

A. That is right.

Q. And I take it from that answer, that you don't have any reservations in your mind that says, "Well, the death penalty may be all right in a particular case but it is never applicable in a case where that person involved didn't personally do the killing"?

A. No.

Q. You have no such reservations in your mind?

A. No.

Q. So that you would apply and could apply it to a case where a person is guilty of first degree murder, even though that person didn't himself do the actual killing, is that right?

A. (The prospective juror nodded affirmatively.)

[fol. 319] Q. May I ask you the same question with respect to the application of the penalty. Would you be less inclined to apply the death penalty to a defendant in a case where you would otherwise apply it simply because the defendant in the particular case is a woman?

A. No, that wouldn't have any bearing on it.

Q. And with respect to the death, if the case that was proved by the People of the State of California, my side of the case, convinced you and all the other jurors beyond a reasonable doubt of the guilt of the defendant, then you wouldn't, would you, nevertheless, say, "Well, the death penalty can't possibly applied because it wasn't proved beyond any doubt whatever"?

A. Oh, no.

Q. You wouldn't require the impossible?

A. No.

Mr. Gustafson: Pass for cause.

The Court: You pass for cause?

Mr. Gustafson: Pass for cause.

The Court: The peremptory is with the defendant.

Mr. Sullivan: The defendant will excuse Mr. Hood, juror number six.

(Prospective juror excused.)

The Court: Call another name.

The Clerk: August C. Fenner, F-e-n-n-e-r.

The Court: Mr. Fenner, do you live in Santa Paula?

[fol. 320] The Prospective Juror: What is that, sir?

The Court: Where do you live?

The Prospective Juror: In Camarillo, sir.

The Court: Where?

The Prospective Juror: Camarillo.

The Court: Camarillo?

The Prospective Juror: Yes.

The Court: How long have you lived in Ventura County?

The Prospective Juror: Three years.

The Court: What?

The Prospective Juror: Three years.

The Court: You have been here all day today and yesterday?

The Prospective Juror: Yes, I have, sir.

The Court: Do you know the case is all about?

The Prospective Juror: Yes.

The Court: You heard everything all right?

The Prospective Juror: Yes, I have.

The Court. All right, you may inquire.

Mr. Gustafson: Your Honor, I believe it is time for recess.

The Court: Well, I was going to take a recess in a few minutes. We can take it now, if you want to.

All right, ladies and gentlemen, we will take a brief recess.

(Short recess.)

[fol. 321] The Court: These two people are excused by stipulation: Ruth L. Linter, Ruth Linter, Leo Canelli.

Mr. Gustafson: So stipulated.

Mr. Sullivan: Yes, Your Honor.

The Court: All right, you are excused.

Mr. Sullivan: May I proceed, Your Honor?

The Court: Go ahead.

Mr. Sullivan:

Q. Mr. Fenner, may I inquire as to your business or occupation, please?

A. I work for the Quality Control Department, Tally Corporation.

Mr. Sullivan: Will you read that answer, please?

(Record read.)

Mr. Sullivan:

Q. Mr. Fenner, you were in court all day yesterday and again today and I take it that you understand the nature of the charges contained in this indictment; is that correct?

A. That's right.

Q. Is there anything about the nature of those charges that causes you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. And you are aware of the fact that the alleged victim named in this indictment is one Olga Duncan, are you not?

A. Yes, sir.

[fol. 322] Q. And if the evidence in this case discloses that Olga Duncan was the daughter-in-law of my client, Elizabeth Duncan, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, it wouldn't.

Q. If the evidence should further disclose that Olga Duncan at the time she came to her death was then pregnant, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. Have you or has any member of your family or anyone near and dear to you ever been connected in any manner with any law enforcement agency?

A. No, sir.

Q. Well, assuming that law enforcement officers should testify as witnesses in this case, would you be apt to give any greater credence to their testimony than you would that of any other witness merely because they happened to be law enforcement officers?

A. No, sir.

Q. Do you feel that you could weigh and consider the testimony of such a witness by the same standards as you would that of any other witness? Is that right?

A. Yes, sir.

Q. Have you or has any member of your family or anyone near and dear to you ever been the victim of a crime [fol. 323] of assault or passion?

A. No, sir.

Q. Or ever had occasion to be a witness against anyone charged with such a crime?

A. No, sir.

Q. Have you ever had occasion to sit as a trial juror in a criminal case?

A. No, sir.

The Court: Please answer out loud.

The court reporter can't get the nod of your head.

Mr. Sullivan:

Q. You realize from what you heard in this courtroom that as Mrs. Duncan sits in the courtroom today the law clothes her with the presumption of innocence?

A. Yes, sir.

Q. And do you feel that if you are accepted as a trial juror in this case that you could accord to her the benefit of that law?

A. Yes.

Q. Is there any doubt in your mind, Mr. Fenner?

A. I don't know if I'm answering the question correctly this time, sir, but I would judge her on the testimony, but I wouldn't be inclined to believe her own testimony if she went on the witness stand.

Mr. Sullivan: I wonder if I might have the reporter read that answer back, Your Honor?

The Court: Read it back, please.

[fol. 324] (Record read.)

Mr. Sullivan:

Q. In other words, what you mean to tell me, Mr. Fenner, is that if Mrs. Duncan herself should see fit to take the witness stand and testify as a witness in her own behalf, you would be apt to deny her the benefit of her own testimony; is that right?

A. I wouldn't take it into consideration one way or the other.

Q. You mean you would give no consideration at all to her testimony?

A. No.

Q. You would disregard it completely?

A. Completely.

Q. In arriving at a verdict in this case?

A. Yes.

Q. Is that it?

A. That's right.

Q. And you would be inclined to decide this case from the testimony of the prosecution witnesses; is that it?

A. Not alone, not alone on the prosecution's witnesses.

Q. Well, let's say, for example, that Mrs. Duncan would be the only witness who testified on behalf of the defense on this case. You would disregard that testimony?

[fol. 325] A. I would, sir.

Q. Then you would decide it solely on the basis of the People's witnesses if that happened; isn't that right?

A. I'm afraid I would have to, sir.

Q. You think, as a matter of fact, that would prevent you from reaching a fair and impartial verdict in this matter?

A. I'm afraid so.

Q. I take it from your statement, you say this to me in response to my questions, that because you, yourself, have some personal opinion regarding her guilt or innocence?

A. Not her personally, but in my own life personally—I have been in contact with a person, a very close contact to me, who would commit acts, not crimes, and still if she told her story to anybody else, anybody else would believe her. Still I know the fact is not true. In my mind, for the love that she had for her son, love that a party has, she would almost commit anything, except a crime, I would say, to hope.

Q. Well, you say for the love that she has for her son a person would commit almost any crime; is that what you said?

A. Always.

Q. Do you know anything about the love that she has [fol. 326] for her son?

A. No, I am talking about somebody who is personal to me.

Q. What?

A. Talking about the love of a party I knew who was very close to me. That love that she have, in trying to hold that love, she, well, would do almost anything.

Q. Do you know anything about her love for her son?

A. No, sir.

Q. Well, why do you say then because of her love for her son——

Mr. Gustafson: I'm sorry, Your Honor, I think counsel has misunderstood the answer.

Mr. Sullivan: Maybe I did.

Mr. Gustafson: The prospective juror was talking about another person.

The Prospective Juror: Another, not about Mrs. Duncan. I lived with that person so long and know that lots of things that she done that were not true, but what she done, she done for love.

The Court: Well, in any event, Mr. Fenner, is it?

The Prospective Juror: Fenner.

The Court: Fenner. You would refuse to consider Mrs. Duncan's testimony in one way or another if she were [fol. 327] a witness?

The Prospective Juror: That is correct.

The Court: Why don't you challenge him for cause?

Mr. Sullivan: We will challenge him for cause.

The Court: The challenge is allowed. You are excused.

(Prospective juror excused.)

The Clerk: Mrs. Margaret Wilms.

The Court: Where do you live, Mrs. Wilms?

The Prospective Juror: Ventura.

The Court: What?

The Prospective Juror: Ventura.

The Court: How long have you lived in Ventura County?

The Prospective Juror: Fifteen years.

The Court: Have you ever served on a jury?

The Prospective Juror: No, sir.

Mr. Sullivan: Was that answer, "No," Your Honor? Was the last answer, "No," Your Honor?

The Court: What?

Mr. Sullivan: I was asking if the prospective juror's last answer to the court's question was, "No"?

The Court: You have been here all today and yesterday?

The Prospective Juror: Yes, Your Honor.

The Court: And you know what the case is all about?

[fol. 328] The Prospective Juror: Yes, Your Honor.

The Court: If you served on the jury, could you be absolutely fair and impartial?

The Prospective Juror: Yes, I would be.

The Court: You may inquire.

Mr. Sullivan: Thank you, Your Honor.

Q. It is Mrs. Wilms?

A. That's correct.

Q. May I inquire as to your business or occupation, Mrs. Wilms?

A. I am a housewife and I am partly employed in my husband's office in Oxnard.

Q. There is a Mr. Wilms?

A. Yes, there is.

Q. His business or occupation?

A. He is in the insurance business in Oxnard.

Q. You are partly employed in his office?

A. Yes. Occasionally I work.

Q. I see. Mrs. Wiims, I take it that you also are aware of the nature of the charges contained in this indictment; is that right?

A. I am.

Q. Is there anything about the nature of those charges that would cause you to entertain any bias or prejudice against Mrs. Duncan?

A. None whatsoever.

[fol. 329] Q. You know from what you have heard in this courtroom that the alleged victim of this murder is one Olga Duncan?

A. That's right.

Q. And if the evidence in this case should disclose that Olga Duncan, the alleged victim, was the daughter-in-law of Elizabeth Duncan, my client, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, I don't so.

Q. Do you have any children of your own?

A. Yes, I have two daughters.

Q. If the evidence in this case should disclose that Olga Duncan at the time she met her death was then pregnant, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. Have you or your husband or any member of the family or anyone near and dear to you ever been the victim of a crime of assault or passion?

A. No, sir.

Q. Or ever had occasion to be a witness against any person charged with such a crime?

A. No, sir.

Q. Have you or has any relative of yours or anyone near and dear to you ever been connected with any law enforce-

[fol. 330] ment agencies that you know of?

A. Not to my knowledge. I state that nobody near and dear to me. I could have a relative that I don't know, so not to my knowledge.

Q. At least you are not conscious of it?

A. That's right.

Q. As you sit in the jury box this afternoon?

A. That's right.

Q. Well, it may be that during the course of this trial the prosecution may call some witnesses who are law enforcement officers. Would you be apt to give any greater credence to their testimony than you would that of any other witness merely because they happen to be law enforcement officers?

A. I don't believe that I would.

Q. Is there any doubt in your mind about it?

A. No, I just say that because I feel that they are human like anyone else. Why should I show preface to them?

Q. You feel that you could weigh and consider the testimony of a law enforcement officer by the same standards as you would that of any other witness?

A. Yes, I would.

Q. See, at the conclusion of this trial His Honor is going to instruct you as to the law applicable to this case, and he is going to give one instruction telling you how you are [fol. 331] to judge the credibility of witnesses, and you feel that you can follow any instruction that the court gives you as to the law in this case, do you?

A. Yes, I believe so.

Q. You recognize from what you have already heard that Mrs. Duncan, as she sits in court today, is clothed with the presumption of innocence?

A. That's right.

Q. Could you accord to her the benefit of that doctrine of law if you are accepted as a juror in this case?

A. Absolutely.

Q. And would you require the prosecution to prove to your satisfaction, to a moral certainty and beyond a reasonable doubt the guilt of Mrs. Duncan?

A. Yes, I would.

Q. Let's say that you are accepted as a juror in this case. You have heard all of the evidence. You have received the instructions from His Honor. You retired to the jury room. You have discussed the evidence and attempted to weigh it in the light of the law as given to you by the court, and you, yourself, entertain conscientiously a reasonable doubt as to the guilt of Elizabeth Duncan. Under those circumstances would you have any hesitancy in voting for a verdict of not guilty?

A. I don't believe I would. That is hard to say, not being [fol. 332] in a situation like that before. I firmly believe

what I believe in and I am not afraid to stand up for what I believe in.

Q. All right. It isn't an easy task to sit on a jury and try a fellow citizen who is charged with a crime as serious as that of murder. I realize that, but the court is going to tell you that as long as you entertain a reasonable doubt as to the truth of the charge; that is, a reasonable doubt as to the guilt of the person who is on trial, it would be your duty to resolve that doubt in their favor and vote for a verdict of not guilty. If you did entertain that reasonable doubt, would you hesitate to vote for that verdict of not guilty?

A. No.

Q. All right. Would you be apt to surrender your own conscientious opinion if your fellow jurors entertained a contrary opinion, merely for the purpose of arriving at a verdict and bringing this case to a close?

A. Would you repeat that? I got lost.

Mr. Sullivan: Maybe the reporter will read it to you.

(Question read.)

The Prospective Juror: No, sir, I would not.

Mr. Sullivan:

Q. Mrs. Wilms, do you subscribe to any newspapers?

[fol. 333] A. Yes, to the Ventura County Star Free Press and occasionally we buy the Oxnard Press Courier when the boy comes to our office.

Q. Do you occasionally read some of the Los Angeles newspapers?

A. Well, we take — excuse me — we take the Sunday Times. It is just delivered on Sunday.

Q. Yes, I see. The children can have a funnypaper?

A. That's right.

Q. Well, do you sometimes listen to news broadcasts on the radio?

A. No.

Q. Do you ever listen to news broadcasts on television?

A. Yes.

Q. Have you been a subscriber to the local newspaper for quite some time past?

A. Many years.

Q. And do you recall whether or not you read anything about this case in the newspaper?

A. Yes, I have.

Q. Do you recall whether or not you read any articles which purported to relate the testimony of the witnesses who appeared before the grand jury?

A. No, I had lost interest in it by then.

[fol. 334] Q. Do you recall having read any articles which purportedly related a confession on the part of either Augustine Baldonado or Luis Moya?

A. Well, I hadn't read it. I have heard people mention it. I was aware of the fact that they have.

Q. You heard that mentioned?

A. Yes.

Q. And in connection with what you heard mentioned, did you hear anything said about, in this proposed confession, that either Augustine Baldonado or Luis Moya had accused Mrs. Duncan of hiring them?

A. Yes, I have.

Q. Do you recall whether or not you read any statements in any newspaper which purportedly contained a statement made to the press by Mr. Gustafson, the District Attorney, of this County, concerning this case?

A. No, I did not read that.

Q. Then in addition to what you read, as I understand your answers to my questions, you did discuss this case with other persons?

A. No, I did not say that.

Q. You have heard it discussed?

A. I have heard it discussed. I did not enter into the discussion.

Q. You didn't participate in the discussion yourself?

[fol. 335] A. I didn't have the time. It took place in our office when I was busy, but I overheard some things.

Q. From what you, yourself, read and from what you heard discussed, did you, yourself, form any opinion regarding the guilt or innocence of Mrs. Duncan?

A. No, I did not.

Q. And as you sit in the jury box today do you now entertain any opinion at all concerning her guilt or innocence of this charge?

A. No, I do not. That will have to be proven to me.

Q. Let me ask you this: Assuming that you were on trial here today charged with this identical offense and you wanted to be tried by a jury composed of 12 men and women who would be absolutely fair and impartial, who would render on unbiased and unprejudiced verdict. Do you feel that you could receive such a trial at the hands of 12 people of your present frame of mind?

A. Yes, I do.

Q. And one other question, Mrs. Wilms. Do you personally know of any reason whatsoever why you could not give to Mrs. Duncan a fair and impartial trial?

A. No, none whatsoever.

Mr. Sullivan: Thank you, Mrs. Wilms. Pass for cause.

Mr. Gustafson: Mrs. Wilms, do you know Mr. Sullivan?

The Prospective Juror: No, I do not.

[fol. 336] Q. Do you know Mr. Frank Duncan?

A. No, I do not.

Q. Do you know the defendant, Elizabeth Duncan?

A. No, I do not.

Q. Could you be absolutely fair to my side of the case in judging the facts of this matter as you would be to Mr. Sullivan's side of the case, even though he may be a very able and brilliant and clever lawyer?

A. I believe I could.

Q. In other words, you would likewise then follow the instructions of the judge that you are to decide the case solely on the basis of the evidence presented here and that what the attorneys say to you is not evidence?

A. That's right.

Q. I take it, Mrs. Wilms, you don't have any prejudice against any law enforcement officers?

A. No, sir, none whatsoever.

Q. And so you would judge their testimony, if they should testify, by the same rules which are applicable to any witness who does testify?

A. I can't see that the fact they are law enforcement officers would make any difference.

Q. No. There are certain rules for judging the weight to be given to the testimony of all witnesses. You would apply those rules to all witnesses?

A. That's correct.

[fol. 337] Q. The fact that there may be disputes here as to what the facts were; in other words, evidence on one side indicating that this is the fact and evidence on the other side indicating that it isn't the fact, would that in and of itself cause you to say, "Well, so long as there are two sides to it, I can't possibly decide which is the truth"?

A. That's hard for me to say, not having——

Q. I know it is hard to say. I am not talking about what the specific evidence may be. I am simply saying that whatever the evidence may be, would the mere fact, standing alone, that there is a difference cause you to say, "Regardless of what the evidence is, that you couldn't decide the case"?

A. I'm sorry, I don't quite that.

Q. All right, Mrs. Wilms, I will see if I can make it plain.

A. In other words, do you mean if I were doubtful would I be swayed to go——

Q. No, not if you are doubtful, no. I think you have already indicated that you would not vote guilty unless you were convinced beyond a reasonable doubt that Mrs. Duncan was guilty?

A. That's right.

Q. I believe you have said that if you were convinced beyond reasonable doubt that she is guilty, you would [fol. 338] not hesitate to vote that way; isn't that correct?

A. That's right.

Q. All right. Now, whichever way you vote, guilty or not guilty, you have got to base your decision on the evidence presented to you.

A. Yes.

Q. You don't at this point, of course, know what the evidence is.

A. That's right.

Q. But there are some people who feel that unless the evidence is all on one side and absolutely none on the other that they cannot vote guilty. That isn't the rule of law. You don't have that thought in your mind, do you?

A. No, I believe I have to weigh the evidence.

Q. Yes.

The mere fact that there may be evidence on this side and evidence on the other side in and of itself won't pre-

vent you from weighing the evidence and determining which is the truth?

A. No.

Q. So that you could act properly as a juror and in the light of conflicting evidence decide which evidence to believe?

A. That's right.

Q. So that you would not then, would you, Mrs. Wilms, say that you had a reasonable doubt simply because there [fol. 339] was a conflict there was a conflict in the evidence?

A. No, I didn't——

Q. You see what I mean now?

A. I didn't understand that. Yes, I understand now.

Q. And in weighing that evidence you will listen to the instructions of law given to you by Judge Blackstock will you not?

A. Yes.

Q. Will you apply those rules of law as he gives them to you whether you think that they are good or bad?

A. Yes, I would.

Q. In other words, maybe I might state that the law is so and so and you say to yourself, "Well, that is a silly law. I don't like that." You, nevertheless, will apply it, will you not?

A. That is correct, if that's the law.

Q. Regardless of what your personal opinion of that particular rule might be?

A. That's right.

Q. Now, as you will note, I think as you have heard, I represent the side of the case called the People of the State of California. Mr. Sullivan represents Elizabeth Ann Duncan. The title of the case is "The People of the State of California versus Elizabeth Ann Duncan." Does the fact that I don't have a live person, particular person sitting [fol. 340] near as my client, but represent the People of the State of California generally, whereas Mr. Sullivan has a person, Mrs. Duncan as his client, would that fact cause you to be more favorable to his side of the case than it would to mine?

A. No, none whatever.

Q. And would the fact that you may, after hearing all of the evidence, find yourself somewhat sympathetic

with Mrs. Duncan for some reason cause you to allow that sympathy to influence you in deciding whether she is guilty or innocent under the law, if the judge tells you that you are not allowed to let sympathy influence your verdict?

A. I don't believe it would.

Q. Mrs. Wilms, of course, it is very important to me and it is important to Mr. Sullivan, too, that the jurors decide the case solely on the basis of the evidence presented and solely on the basis of that evidence under the law as given by Judge Blackstock, and you wouldn't be deciding the case on the basis of the evidence if you let sympathy come into play.

A. That's right.

Q. In other words, you wouldn't be doing your job if you said, "Well, the evidence convinces me beyond a reasonable doubt that Mrs. Duncan is guilty under the law as given to me by Judge Blackstock and that is what the [fol. 341] verdict should be, but I feel so sympathetic toward her that I don't want her convicted. I will vote not guilty"?

A. No, that could not be the case.

Q. Well, you hesitated somewhat, Mrs. Wilms, before in answering the question as to whether you would allow sympathy to influence your verdict.

A. You stated now that if the evidence had proven her guilty.

Q. Yes.

A. By reasonable doubt.

Q. Yes.

A. I could not let sympathy be involved there.

Q. That is exactly it. In other words, you wouldn't?

A. No?

Q. Let sympathy——

A. No.

Q. ——enter into it?

A. No.

Q. Now, do you have any conscientious opinion respecting the death penalty which would preclude you or keep you from voting for a verdict of guilty of first degree murder when the death penalty is one of the two penalties that might be applied to a person guilty of that offense?

A. No, I have no conscientious objection.

[fol. 342] Q. I didn't get that.

A. No, I don't have any conscientious objection.

Q. Would you, Mrs. Wilms, or do you have any conscientious objection against the application of the death penalty to a person who is found guilty beyond a reasonable doubt of first degree murder, even though that person did not personally do the killing?

A. No, I have not.

Q. So you would accept the law that the death penalty, if it is proper in a particular case is applicable to a person guilty of first degree murder, regardless of whether that person himself did the killing or whether he was guilty as a person who encouraged or advised somebody else to do the killing?

Mr. Sullivan: Just a moment. I am going to object to that as a misstatement of law, that the death penalty is proper in a particular case. That is a matter that is entirely within the discretion of the jury. There is no case, the law says, that is a proper case for the death penalty.

Mr. Gustafson: Mr. Sullivan, I didn't mean to leave that impression. May I clarify that?

Mr. Sullivan: Yes.

Mr. Gustafson:

Q. Mrs. Wilms, I did not intend to say that there was a particular set of circumstances under which the death penalty must be applied. I meant by my statement that [fol. 343] whether a person is guilty of first degree murder shall life imprisonment or the death penalty is a matter for you as a jurors solely to determine, and you will have heard evidence concerning that matter at a trial which follows the trial on the issue of guilt. Now, if you conclude that this is a case—first of all, let's say that you and the other jurors have voted that Mrs. Duncan is guilty of first degree murder, and if you believe from the circumstances of the case and from the evidence which you hear on the issue of penalty that the death penalty, in your discretion, is the appropriate penalty, would you, nevertheless, refuse to apply it because you felt that no one should get that under any circumstances who did not personally do the killing?

A. No.

[fol. 344] And would you similarly, having found her guilty of first degree murder and having heard the evidence with respect to penalty and having decided that in this particular case the death penalty is the proper penalty, would you decide to vote against the death penalty because the defendant is a woman rather than a man?

A. No, I would not.

Q. You are perfectly sincere and conscientious?

A. If it has been proven that she is guilty of the crime she is accused of, that would be so.

Q. And I take it, that you are perfectly agreeable to accepting the rule of law that requires that I need prove Mrs. Duncan's guilt only beyond a reasonable doubt?

A. Yes.

Q. And that I need not prove her guilt beyond any doubt whatever?

A. That is what I heard you repeat.

Q. You have no prejudice against such a situation?

A. No.

Q. In the law?

A. No.

Q. You recognize that, sitting here months after some event happened, or sitting in any jury in any case after the event has happened, nothing can ever be proved beyond any possible doubt whatever, so the law doesn't require me or anybody else to prove anything beyond any doubt what[fol. 345]soever? You have no quarrel with that, do you?

A. No.

Q. It sounds reasonable to you, does it not?

A. Yes, it does.

Mr. Gustafson: Pass for cause.

The Court: All right, the peremptory is with the People.

Mr. Gustafson: I accept the jury as it is now constituted.

The Court: All right, the peremptory is with the defendant.

Mr. Sullivan: The defendant will excuse Miss Guthrie, Juror No. 2, your Honor.

(The prospective juror was excused.)

The Court: Call another name.

The Clerk: Ernest J. Stefanko—S-t-e-f-a-n-k-o. How do you pronounce that?

The Prospective Juror: Stefanko.

The Court: Mr. Stefanko, is it?

The Prospective Juror: Yes, sir.

The Court: Where do you live?

The Prospective Juror: Ojai.

The Court: How long have you lived in Ventura County?

The Prospective Juror: Three years.

The Court: Where did you live before that?

The Prospective Juror: Michigan.

The Court: Michigan?

[fol. 346] The Prospective Juror: Yes, sir.

The Court: Did you ever serve on a jury in this State?

The Prospective Juror: No, sir.

The Court: Did you ever serve on a jury any place?

The Prospective Juror: No, sir.

The Court: You have been here all day today and you were here yesterday?

The Prospective Juror: Yes, sir.

The Court: Do you know what the case is all about?

The Prospective Juror: Yes, sir.

The Court: And if you should serve on the jury, you would act fairly and impartially as to both sides?

The Prospective Juror: Yes, sir.

The Court: You may inquire.

Mr. Sullivan:

Q. Mr. Stefanko, are you married?

A. Yes, sir.

Q. And do you have a family?

A. Yes, sir.

Q. You know from what you already heard, that Mrs. Duncan is charged in this indictment with the offense of murder?

A. Yes, sir.

Q. And you further know from what you have already heard, that the alleged victim of that murder is Olga Duncan?

A. Yes, sir.

Q. Now, if the evidence in this case should disclose [fol. 347] that the alleged victim, Olga Duncan, was the

daughter-in-law of Elizabeth Duncan, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. If the evidence should further disclose that Olga Duncan at the time she came to her death, was then pregnant, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. May I inquire, Mr. Stefanko, as to what your business or occupation is, please?

A. I am a service man for Burroughs Corporation.

Q. Have you or has any member of your family or anyone near and dear to you ever been the victim of a crime of assault or passion?

A. No, sir.

Q. Or ever had occasion to be a witness against any person charged with that crime?

A. No, sir.

Q. Are you acquainted with Mr. Roy Gustafson, the District Attorney of this County?

A. No.

Q. Are you acquainted with any of the deputies or members of his staff?

A. No, sir. I worked in the office of the District Attorney, repairing adding machines.

[fol. 348] Q. You have worked up here in the office here repairing adding machines?

A. Yes. I serviced the County also.

Q. But that was for your employer, the Burroughs Corporation, is that right?

A. Yes.

Q. You had, I take it, nothing to do with soliciting that repair business on behalf of your employer?

A. No, sir.

Q. You were merely sent up there to perform the repair work?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Well, I take it that that hasn't caused you to regard Mr. Gustafson or the members of his staff as close personal friends of yours?

A. No, sir.

Q. And I take it that that would certainly have no bearing on your acting as a fair and impartial juror, if you should be accepted as such in this case, is that right?

A. Yes, sir.

Q. Have you ever been or ha. any relative of yours or anyone near and dear to you been connected with any law enforcement agency?

A. No, sir.

[fol. 349] Q. Well, it might be possible that law enforcement agents may testify as witnesses in this case on behalf of the People. If they should do so, would you be apt to give any greater credence to the testimony of such a witness than you would any other witness, merely because he happens to be a law enforcement officer?

A. No.

Q. You feel that you could weigh and consider the testimony of such a witness by the same standards as you would that of any other witness, is that right?

A. Yes, sir.

Q. Well, now, if Mrs. Duncan should see fit to take the witness stand and testify as a witness in her own behalf, would you be apt to deny her the benefit of her own testimony merely because she happened to be accused of this crime in this indictment?

A. No, sir.

Q. You recognize the fact, from what you have heard in court, that as she sits in the courtroom today, the law clothes her with the presumption of innocence?

A. Yes, sir.

Q. Do you feel that you could accord to her the benefit of that presumption of the law, if you are accepted as a trial juror in this case?

A. Yes, sir.

Q. You, I take it then, would require the District Attor-[fol. 350] ney to prove to your satisfaction, to a moral certainty and beyond a reasonable doubt, the guilt of Mrs. Duncan, would you?

A. Yes, sir.

Q. You recognize the fact that she doesn't have to come in here and prove her innocence?

(The prospective juror nodded affirmatively.)

Q. Well, let's assume that you are accepted as a juror in this case and you have heard all of the evidence and you have heard the instructions given to you by His Honor and you retire to the jury room and you have discussed the evidence fully and fairly with your fellow jurors and you honestly and conscientiously entertain a reasonable doubt as to Mrs. Duncan's guilt. Would you under those circumstances hesitate to resolve that doubt in her favor and vote for a verdict of not guilty?

A. Would I hesitate?

Q. Would you hesitate to vote for verdict of not guilty if you had a reasonable doubt as to her guilt?

A. No, sir.

Q. And so long as you entertained that reasonable doubt you would continue to vote for a verdict of not guilty, is that right?

A. Yes.

Q. Would you do that irrespective of how your fellow jurors may feel about the case?

[fol. 351] A. Yes, sir.

Q. It may be that this case will be a protracted one. It might last four, five weeks or longer. Is that going to work any particular hardship on you to serve on this jury, if it should take that long?

A. Oh, not that I know of, no.

Q. Now, do you subscribe to any of the local papers?

A. Yes, sir.

Q. What paper?

A. Star-Free Press.

Q. Star-Free Press. And have you been a subscriber to the Star-Free Press for some time?

A. Yes, sir.

Q. For a matter of——

A. About three years.

Q. About two years?

A. Yes.

Q. So that you were a subscriber during the month of November and December of 1958 and up to the present time in this present year, is that right?

A. Yes.

Q. Do you sometimes listen to news broadcasts on the radio?

A. No. Well, I might have at that time. I don't believe now, because my car radio is on the fritz.

Q. You have a radio in your car?

[fol. 352] A. In my car, yes, sir.

Q. Sometimes as you are driving along, you may turn on the radio and catch a news broadcast?

A. Yes.

Q. And you might catch a news broadcast from a local broadcasting station, is that correct?

A. Yes.

Q. You say your car radio is out of repair now?

A. Yes, at the present time, yes.

Q. Has it been out of repair just recently?

A. Just recently, yes.

Q. Do you sometimes listen to newscasts on television programs?

A. Yes, sir.

Q. Have you in the past read or heard anything about this particular case?

A. Yes, sir.

Q. In addition to what you read or heard about the case, have you discussed it with any other persons?

A. Oh, a few, yes.

Q. And could you say approximately how many?

A. Oh, a dozen or more, I suppose. I have heard it discussed. It is hard to remember how many you discuss it with.

Q. I realize. But at least the subject matter was either discussed by you or you heard it discussed by other persons?

[fol. 353] A. Yes.

Q. And you don't know whether those persons whom you heard discuss it or with whom you discussed it yourself, had any personal knowledge of the facts concerning this case, do you?

A. No, sir.

Q. And, of course, you would have no way of knowing whether any of those persons might possibly be called as witnesses in this case, do you?

A. No, sir.

Q. Well, as a result of what you read and what you discussed or heard discussed concerning this case, or what

you might have heard on news broadcasts, did you yourself form any opinion concerning the guilt or innocence of Mrs. Duncan?

A. Yes, sir.

Q. And was that opinion which you formed, one that was unfavorable to Mrs. Duncan?

A. Yes, sir.

Q. As a result of—withdraw that. Do you still entertain that same opinion?

A. Yes, sir.

Q. Is that opinion such that you feel that it would preclude you from acting fairly and impartially as a juror in this case?

A. I don't think so.

[fol. 354] Q. What?

A. No, sir.

Q. Well, do you think that the opinion which you formed in the past and which you now have, would have a tendency to influence your verdict in this case?

A. No, sir.

Q. Do you think that you could decide this case solely and exclusively from the evidence that you hear in this courtroom?

A. Yes, sir.

Q. Well, let me ask you this question: Bearing in mind the opinion that you formed concerning this case, which was adverse to my client, Elizabeth Duncan, and bearing in mind also that you still entertain that same opinion, and assume that your wife was on trial here today, charged with this identical offense which Mrs. Duncan is accused of, and you wanted your wife to be tried before 12 men and women who were absolutely unbiased and unprejudiced in any manner whatsoever, men and women whom you wanted to return an absolutely fair and impartial verdict, do you feel that your wife could receive such a trial at the hands of 12 men and women of your present frame of mind?

A. Yes, sir, I believe so.

Q. You would be willing to trust her fate to 12 people of your present frame of mind, would you?

A. Yes, sir.

[fol. 355] Q. And regardless of what verdict they returned, you would feel that it was the honest, fair, unbiased

and unprejudiced opinion of that particular jury, is that right?

A. Yes, sir.

Q. Well, let me ask you this one further question: Do you know of any reason why you could not render a fair and impartial verdict in this case?

A. No, sir, I don't.

Mr. Sullivan: We will pass for cause.

Mr. Gustafson:

Q. You heard the questions which I asked of the other jurors, have you not?

A. Yes, sir.

Q. And you heard their answers to those questions?

A. Yes, sir.

Q. Would your answers be any different than the answers of those jurors who remained in the box?

A. No, sir.

Q. In other words, you don't have any conscientious opinion which would preclude you from voting for a verdict of guilty of first degree murder, which might carry with it the death penalty?

A. No, sir.

Q. And you don't have any conscientious opinion which would preclude you from applying the death penalty in a case where the person who committed the first degree murder did not actually do the killing?

[fol. 356] A. No, sir.

Q. And you don't require me to prove the case beyond any doubt whatever but only beyond a reasonable doubt?

A. That is right.

Q. And with respect to my side of the case, you haven't any prejudice against me or any bias in favor of Mr. Sullivan's side, because he has a person sitting there as his client and I don't have any particular person as my client but only the People of the State of California?

A. (The prospective witness shook his head negatively.)

Q. And you will follow the law as given to you by Judge Blackstock, regardless of whether you agree with it or not, is that correct?

A. Yes.

Mr. Gustafson: Pass for cause.

The Court: All right. The peremptory is with the People.

Mr. Gustafson: I again accept the jury as now constituted.

The Court: The peremptory is now with the defendant.

Mr. Sullivan: The defendant will excuse Mr. Ernest J. Stefanko, Juror No. 2.

(The prospective juror was excused.)

The Court: Listen. Be quiet in this courtroom. If we have any further demonstrations, I will order the Bailiff to [fol. 357] put you all out in the hall and you will have to come in here one at a time as they call you.

The Clerk: Jehri—that is J-e-h-r-i-e—initial "S"—Dodson—D-o-d-s-o-n. Mrs. Dodson?

The Prospective Juror: Yes, sir.

The Clerk: Mrs.

The Court: Where do you live, Mrs. Dodson?

The Prospective Juror: Ventura.

The Court: Ventura?

The Prospective Juror: Yes.

The Court: Did you ever serve on a jury in a criminal case?

The Prospective Juror: No, sir.

The Court: You have been here all day and you were here yesterday?

The Prospective Juror: Yes.

The Court: You know what this case is all about?

The Prospective Juror: Yes.

The Court: And if you should serve on this jury, could you be fair and impartial to both sides?

The Prospective Juror: No, sir.

The Court: You could not?

The Prospective Juror: No, sir.

The Court: Well, you know, you understand, that it is the duty of a citizen to serve on a jury?

The Prospective Juror: I do.

[fol. 358] The Court: And you know that this a criminal case?

The Prospective Juror: Yes.

The Court: And you know that the People of the State of California, who are represented here by Mr. Roy Gustafson, the District Attorney of Ventura County, must prove this

defendant guilty beyond all reasonable doubt and to a moral certainty before she could be convicted under the law of this State? You know that, don't you?

The Prospective Juror: Yes, I know that.

The Court: Well, on the other hand, if the District Attorney proves her guilty beyond all reasonable doubt and to a moral certainty, it would be your duty to convict her, wouldn't it?

The Prospective Juror: But if he fails to do that, it would be your duty not to convict her? Do you understand that? If he failed to prove that she is guilty, you wouldn't convict her, would you?

The Prospective Juror: No, I don't suppose I would.

The Court: You don't suppose that you would? You wouldn't convict anybody, if the evidence didn't prove that she was guilty, would you?

The Prospective Juror: No.

The Court: Well, you may inquire. I don't see why you couldn't be fair and impartial in the case and decide the case according to the law and the evidence.

Mr. Sullivan:

Q. Is it Miss. Dodson or Mrs.?

[fol. 359] A. Mrs.

Q. Mrs.?

The Clerk: Mrs.

A. Mrs.

Mr. Sullivan: Thank you.

Q. Mrs. Dodson, may I inquire as to your business or occupation?

A. I work at Loop's. I'm a waitress at Loop's.

Q. A waitress?

A. Yes.

Q. You indicated in response to questions which the Court asked you, that you didn't feel that you could act fairly and impartially in this matter, is that right?

A. That is right.

Q. And that is the way you honestly and conscientiously feel about it?

A. That is right.

Q. Is that because of the fact that you yourself have formed some opinion?

A. Yes.

Q. Respecting the guilt or innocence of Mrs. Duncan?

A. (The prospective witness nodded affirmatively.)

Q. And was that opinion favorable or unfavorable to Mrs. Duncan?

A. Unfavorable.

Q. Pardon me?

[fol. 360] A. Unfavorable.

Q. And have you expressed that opinion to other persons?

A. No, I don't believe I have.

Q. Was that opinion formed as a result of something which you read or heard concerning this case?

A. Yes.

Q. Or both?

A. Both.

Q. Both. In other words, you read something in the newspapers about this case?

A. (The prospective juror nodded affirmatively.)

Q. Did you hear some broadcasts over the radio concerning it?

A. Yes.

Q. And did you hear some broadcasts on television programs concerning this case?

A. Yes.

Q. And did you read any newspaper articles which purported to report the testimony of any of the witnesses who testified before the Grand Jury?

Mr. Gustafson: I am going to object to that, your Honor, on the grounds that it is incompetent, irrelevant and immaterial since the prospective juror has already stated that she formed an opinion unfavorable to Mrs. Duncan.

The Court: Yes. That is sustained.

[fol. 361] Mr. Sullivan: All right.

Q. Well, you feel that as a result of the opinion that you have already formed, that you would be influenced in reaching a verdict in this case by reason of the opinion which you have already formed?

A. This is right.

Q. Is that right?

A. (The prospective juror nodded affirmatively.)

Q. You don't feel that you could set aside that opinion and decide the case solely and exclusively from the evidence as you hear it in this courtroom?

A. Well, I feel that I would always have that in the back of my mind.

Q. You would always have it in the back of your mind?

A. Yes.

Q. And it would be likely to influence your verdict in this trial?

A. Yes.

Q. And for that reason you do not feel that you can act fairly and impartially?

A. Well, I am just afraid that I wouldn't.

Q. You are afraid that you wouldn't?

A. Yes.

Q. And if you yourself were on trial for this offense, you wouldn't want to be tried before a jury of 12 men and [fol. 362] women of your present frame of mind, would you?

A. I would not.

Q. You wouldn't feel that you would receive at their hands a fair and impartial verdict?

A. No.

Mr. Sullivan: We will challenge this juror.

The Court: All right, the challenge is allowed. Call another witness. Call another juror. Call another name.

(The prospective juror was excused.)

The Clerk: Ila—that is I-l-a—Jean—J-e-a-n—Farmer—F-a-r-m-e-r. Mrs. Farmer?

The Prospective Juror: Yes.

The Clerk: Mrs. Farmer, your Honor.

The Court: Is it Mrs. Farmer?

The Prospective Juror: Yes.

The Court: Mrs.?

The Prospective Juror: Yes.

The Court: Where do you live, Mrs. Farmer?

The Prospective Juror: Santa Paula.

The Court: How long have you lived in this County?

The Prospective Juror: Thirty-two years.

The Court: Did you ever serve on a jury?

The Prospective Juror: No.

The Court: You have been here all day today and you were here yesterday?

The Prospective Juror: Yes.

[fol. 363] The Court: And you know what this case is all about now?

The Prospective Juror: Yes.

The Court: Could you be fair and impartial, if you should serve on the jury in this case?

The Prospective Juror: Yes.

The Court: You may inquire.

Mr. Sullivan:

Q. Is it Miss Farmer or Mrs.?

A. Mrs.

Q. Mrs. Farmer, you live in Santa Paula, did I understand?

A. Yes, I do.

Q. Mrs. Farmer, may I inquire as to your business or occupation?

A. I am a receptionist at the Texas Oil Company here in Ventura.

Q. And is there a Mr. Farmer?

A. Yes, there is.

Q. And may I inquire as to his business or occupation?

A. I work for Wonderly Construction Company at Fillmore.

Q. Mrs. Farmer, you are aware, from what you have already heard, that Mrs. Duncan is charged in this indictment with the offense of murder?

A. Yes.

Q. And you are further aware that the alleged victim of [fol. 364] that murder is one Olga Duncan?

A. Yes.

Q. If the evidence in this case should disclose that Olga Duncan was the daughter-in-law of Mrs. Duncan, would that cause you to entertain any bias or prejudice against Elizabeth Duncan?

A. No.

Q. Do you have any children?

A. Yes, I do.

Q. If the evidence in this case should further disclose that Olga Duncan at the time she came to her death was then pregnant, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. Have you or has any relative of yours, or anyone near and dear to you, ever been the victim of a crime of assault or passion?

A. No.

Q. Or ever had occasion to be a witness against a person charged with a like crime?

A. No.

Q. Are you personally acquainted with Mr. Gustafson, the District Attorney of this County?

A. No.

Q. Are you personally acquainted with any of his deputies or members of his staff?

[fol. 365] A. I am acquainted with Mary Forgey.

Q. You mean the lady seated right here (indicating)?

A. Yes.

Q. Is she a friend of yours?

A. Yes.

Q. Has she been a friend of yours for some time?

A. Yes. We used to bowl together.

Q. You used to bowl together?

A. Yes.

Q. You were on the same bowling team or was that a public bowling team?

A. I can't remember. Were we on the same team?

Mary Forgey: No.

The Prospective Juror: No.

Mr. Sullivan: We will let you answer that question.

Mary Forgey: No.

Mr. Sullivan:

Q. You regard her as a close friend of yours?

A. Yes.

Q. You wouldn't dare say No, would you?

A. No.

Q. Well, it might be that some law enforcement officers may testify in this case and it may be that some of them might be Deputy Sheriffs of this County. The fact that you

have a friend who is a member of the Sheriff's staff of this County, would that fact cause you to give any greater [fol. 366] credence to the testimony of, say, a Deputy Sheriff of this County, if he should testify in this case?

A. No.

Q. Would you be apt to give any greater credence to the testimony of a law enforcement officer than you would that of any other witness, merely because he happened to be a law enforcement officer?

A. No.

Q. You realize from what you have heard in this courtroom, that as Mrs. Duncan sits here in this courtroom, she is clothed with the presumption of innocence?

A. Yes.

Q. Do you not?

A. Yes.

Q. If you are accepted as a juror in this case, can you give to her the benefit of that presumption of the law?

A. Yes.

Q. I take it then that if you are accepted as a juror in this case, that you would require the prosecution to prove to your satisfaction, to a moral certainty and beyond a reasonable doubt, the guilt of Mrs. Duncan, is that it?

A. Yes, sir.

Q. Well, let's say that you are accepted as a juror and that you have heard all of the evidence in this case; that is, not only the evidence offered on behalf of the prosecution but any evidence offered on behalf of the defendant, you [fol. 367]) have had the instructions from His Honor, you retire to the jury room, you fully and fairly discuss this matter with your fellow jurors, and you come to the honest and conscientious conclusion that you have a reasonable doubt in your own mind regarding the guilt of Mrs. Duncan. Under those circumstances would you hesitate to vote for a verdict of not guilty?

A. No, I would not.

Q. And would you do that, irrespective of how your fellow jurors might feel about the matter, so long as you entertained a reasonable doubt?

A. What was that question again?

Q. Well, you would continue to vote for a verdict of not guilty, as long as you entertained a reasonable doubt about her guilt, wouldn't you?

A. Oh, yes.

Q. And you would do that irrespective of how the other jurors felt about the matter, is that right?

A. Yes, that is right.

Q. In other words, you would exercise your own judgment, wouldn't you?

A. Yes.

Q. And be guided by your own conscience, isn't that right?

A. Yes.

Q. Now, assuming that Mrs. Duncan should take the witness stand and testify as a witness in her own behalf, [fol. 368] would you deny to her the benefit of her own testimony merely because she happened to be the defendant in this case?

A. No, I wouldn't.

[fol. 369] Q. Do you subscribe to any of the newspapers that are published locally?

A. The Los Angeles Times.

Q. The what?

A. The Los Angeles Times.

Q. And any other paper?

A. No.

Q. Do you occasionally read any of the papers that are published here in Ventura or Oxnard?

A. Once in a while the Star-Free Press.

Q. I think you said that you are a receptionist at the Texas Oil Company?

A. Yes.

Q. And you greet the people who come in to see the officials and employees of the Texas Oil Company?

A. Yes.

Q. Sometimes they have to wait there until they meet the people and you have magazines and newspapers around there?

A. No.

Mr. Gustafson: Objected to as incompetent, irrelevant, and immaterial, completely inconsequential to this question of bias.

Mr. Sullivan: Well, it was just a preliminary question.

The Court: How is that? The objection is sustained.

[fol. 370] Mr. Sullivan:

Q. Well, now, do you sometimes listen to radio broadcasts of news?

A. No, I don't.

Q. Do you ever listen to news broadcasts on television programs?

A. Once in a while, yes.

Q. Have you read anything about this case in the past?

A. Yes, I have.

Q. Is that something that you read in the Los Angeles newspapers?

A. Yes.

Q. Did you read anything about it in the local newspapers?

A. I think I did, yes.

Q. Do you recall having read any articles which purportedly reported the testimony of any witnesses who appeared before the grand jury in this matter?

A. I don't remember.

Q. You have no independent recollection?

A. No, I don't.

Q. (Continuing) Of that as you sit on the witness stand here today; is that right?

A. No.

Q. Do you recall having read any articles which purportedly reported a confession by one Augustine Baldonado?

[fol. 371] A. I can't remember. I don't think so.

Q. Do you recall having read any articles in any newspapers which purportedly reported a confession by one Luis Moya?

Mr. Gustafson: Your Honor, I am going to object to this question. I haven't heretofore objected to this line of questioning, but I am now to facilitate the trial, because it seems to me to be immaterial what particular things the juror read or what particular newspapers or what particular media of communication were listened to or were read. There is only one pertinent question and that is whether this prospective juror has formed or expressed an opinion on the guilt or innocence of the defendant based on either what he read or heard discussed.

I see no need for all these preliminary questions.

Mr. Sullivan: Well, I think in view of the fact of the amount of publicity which this case has attracted, Your Honor, some of the statements which have been release, to the press, or purportedly released to the press, I have a right to know whether these jurors, prospective jurors have read them. After all, we are faced with a pretty serious charge here, and I think that we should be allowed a rather wide latitude in the interrogation of prospective jurors in this particular case.

And I think it is just a matter of common knowledge that this case has attracted widespread publicity, Your Honor.

[fol. 372] The Court: Well, I have some doubt about it, and since I have a doubt about it, I will rule favorably to the defendant. The objection is overruled.

Mr. Sullivan: May we have the last question read then by the reporter?

The Court: Yes.

(Last question read.)

The Prospective Juror: No, I don't remember.

Mr. Sullivan:

Q. Well, in ad lition to what you read about this case did you discuss it with any person?

A. Yes, I did.

Q. Did you discuss it with many people?

A. I would say a dozen or so.

Q. Did you discuss it with Mary Forgey?

A. No.

Q. Oh, incidentally, these people with whom you discussed this case, you heard some discussion on their part concerning the case?

A. Yes.

Q. Is that right?

A. Yes, that's right.

Q. And you do not know whether those persons had any personal knowledge of the facts concerning this case which were discussed by them, do you?

A. No, I don't know.

Q. And, of course, you do not know whether any of those [fol. 373] persons might become witnesses in this case, do you?

A. No, I don't.

Q. As a result of what you read or what you discussed or heard discussed concerning this case did you, yourself, form any opinion concerning the guilt of Mrs. Duncan?

A. Yes, I did.

Q. Was that opinion which you formed one that was unfavorable to Mrs. Duncan?

A. Yes, it was.

Q. And as a result of that do you still entertain that same opinion?

A. Yes, I do.

Q. As a result of the opinion which you formed, and which you still entertain, do you feel that that would prevent you from acting fairly and impartially as a juror in this case?

A. No, I don't.

Q. You feel that you could decide this case solely and exclusively from the evidence as you hear it from this courtroom?

A. Yes.

Q. And you feel that the opinion which you formed in the past, and which you now entertain, would not, influence your verdict one way or the other; is that it?

A. No.

[fol. 374] Q. Well, let's assume—

The Court: Wait a minute, wait a minute. You have some confusion now. You said, "No," and I think you meant to say, "Yes."

The Prospective Juror: What was the—

The Court: Read the question, Mr. Reporter.

(Record read.)

The Court: He said, "Is that it." That is it, isn't it?

The Prospective Juror: Do I feel that my opinion now would influence my vote?

The Court: What you mean to say—just a minute—what you mean to say is that the opinion you now have will not influence your verdict?

The Prospective Juror: That is what I mean to say.

The Court: That is what you mean to say, isn't it?

The Prospective Juror: Yes.

The Court: I thought so.

Mr. Sullivan: Well, let's say that you, yourself, or someone near and dear to you were on trial here today charged with this offense, and all you wanted or wanted them to have was a trial at the hands of 12 men and women who are absolutely unbiased and unprejudiced and who would act fairly and impartially. Do you feel that you could receive such a trial at the hands of 12 people of your present frame of mind?

[fol. 375] A. Yes.

Q. Do you know of any reason whatsoever why you could not accord to Mrs. Duncan a fair and impartial trial?

A. No, I don't know of any reason.

Mr. Sullivan: Pass for cause.

Mr. Gustafson:

Q. Mrs. Farmer, you have heard the questions that I have previously directed to the remaining persons in the jury box?

A. Yes.

The Court: Mr. Gustafson, it is 25 minutes of 5:00 now. Are you going to be very long?

Mr. Gustafson: No, Your Honor. Just two or three minutes.

The Court: Go ahead.

Mr. Gustafson:

Q. You don't know Mrs. Sullivan—Mrs. Duncan or Frank Duncan?

A. No.

Q. And you wouldn't hesitate, would you, to vote for a verdict of guilty of first degree murder if you were convinced by the evidence beyond a reasonable doubt that the defendant was guilty of first degree murder?

A. No, I would not.

Q. Anymore than you would hesitate to vote not guilty if you weren't convinced; isn't that right?

A. That's right.

[fol. 376] Q. And similarly you would so long as you believed from the evidence and beyond a reasonable doubt

that the defendant was guilty you would continue to vote that way even if some of your fellow jurors voted not guilty; is that correct?

A. That's right.

Q. This would be the exercise of your own independent judgment on the evidence and on the law as given to you by Judge Blackstock?

A. That's right.

Q. You would follow that law, would you not, regardless of whether you agreed with it or not?

A. Yes.

Q. Now, let me ask you this: With respect to this degree of proof, you wouldn't require me to prove guilt by any greater degree of proof than the law requires, would you?

A. No, I wouldn't.

Q. So that if the judge tells you that you don't have to prove her guilty beyond any doubt whatever, but beyond a reasonable doubt, that is all that you would require me to do, isn't it?

A. Yes.

Q. Now, with respect to the death penalty, do you entertain any conscientious opinion about the death penalty that, would keep you from voting for a verdict of guilty of first [fol. 377] degree murder that might carry with it the possibility of the death penalty?

A. Yes, I do.

Q. You do entertain such an opinion?

A. Yes, I do.

Q. So that you would be unable to vote for a verdict of guilty of a crime which carried the death penalty?

A. That's right.

Mr. Gustafson: I challenge the juror for cause.

Mr. Sullivan: We are going to object to that challenge on the ground that as far as this particular jury is concerned they are only to decide the issue of guilt or innocence of Mrs. Duncan.

The Court: The challenge is allowed. Call another name.

(Prospective juror excused.)

The Clerk: Mrs. Lena M. Garrison, G-a-r-r-i-s-o-n.

The Court: All right, ladies and gentlemen, the court is about to adjourn until tomorrow morning at 10:00 o'clock. You are excused until 10:00 o'clock tomorrow morning.

[fol. 378] Ventura, California, February 18, 1959; 10:00 o'clock A.M.

The Court: The following prospective jurors are excused by stipulation: Mrs. Grace E. Dominy, Simi, on account of illness, and Robert E. Noonan, Hollywood Beach.

Mr. Gustafson: So stipulated.

The Court: Where is that missing prospective juror that was in the box? Do you know who it is?

The Bailiff: She is not outside, sir.

The Clerk: It is Mrs. Saavedra.

The Court: Oh, yes.

Mr. Gustafson: If the Court please, I am willing to stipulate that Mr. Sullivan may proceed with the examination of Mrs. Garrison in order to save time and until the arrival of Mrs. Saavedra.

Mr. Sullivan: I think we ought to have the jurors here before we proceed with this trial, your Honor.

Mr. Gustafson: She is not one to be questioned. She has been passed for cause.

Mr. Sullivan: I realize that.

Mr. Gustafson: I agree that before you exercise any further peremptory challenges she should be here, but I am talking simply about the examination of Mrs. Garrison.

Mr. Sullivan: I think the box should be filled.

[fol. 379] The Court: I don't see any reason why we shouldn't proceed.

Mr. Sullivan: I will abide by——

The Court: No, I am not making any ruling. I am just wondering why you don't stipulate when it can't make any difference one way or the other.

Mr. Sullivan: I will proceed, your Honor.

Q. Is it Mrs. Garrison?

A. Yes, sir.

Q. Mrs. Garrison, where do you reside? Is it Oxnard?

A. In El Rio.

Q. In El Rio?

A. Yes.

The Court: Here is the juror. The missing juror is now present.

Mrs. Saavedra: I'm sorry, sir. I had car trouble this morning.

The Court: What?

Mrs. Saavedra: I had car trouble this morning.

The Court: Car trouble?

Mrs. Saavedra: Yes, sir.

The Court: All right. It is too bad. It held up the whole court.

Mrs. Saavedra: I'm sorry.

The Court: All right, go ahead.

Mr. Sullivan:

Q. May I inquire as to your business or occupation, Mrs. [fol. 380] Garrison?

A. I am a homemaker.

Q. Is there a Mr. Garrison?

A. Yes, sir.

Q. His business, please?

A. He is on maintenance out at the General Hospital.

Q. Maintenance at the General Hospital?

A. Yes, sir.

Q. Do you have any children, Mrs. Garrison?

A. Yes, sir.

Q. You understand from what you have heard in the last two days in this courtroom that Mrs. Duncan is charged in this indictment with the offense of murder, do you not?

A. Yes, sir.

Q. And you further understand that the alleged victim of that alleged murder is one Olga Duncan?

A. Yes, sir.

Q. Is there anything about the nature of that charge that would cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. Have you or has any member of your family or anyone near and dear to you ever been the victim of a crime of assault or passion?

A. No, sir.

Q. Or ever had occasion to be a witness against any [fol. 381] person charged with such a crime?

A. No, sir.

Q. Are you personally acquainted with Mr. Gustafson, the District Attorney?

A. No, sir, I am not.

Q. Are you acquainted with any of the deputies in his office or any members on his staff?

A. Not to my knowledge.

Q. Not to your knowledge. Have you ever been or has any member of your family or anyone near and dear to you been connected with any law enforcement agency?

A. No, sir.

Q. It might be possible that a law enforcement officer may testify as a witness in this case. If that should happen, would you be apt to give any greater credence to the testimony of such a witness merely because he happened to be a law enforcement officer?

A. No, sir.

Q. Do you feel that you could weigh and consider the testimony of such a witness by the same standards as you would weigh and consider the testimony of any other witness?

A. Yes, sir.

[fol. 382] Q. Now, let's assume that Mrs. Duncan shall see fit to take the witness stand and testify as a witness in her own behalf. Would you be apt to deny her the benefit of her own testimony merely because she happens to be the defendant in this case?

A. No.

Q. You understand from what you have heard that as Mrs. Duncan sits in the courtroom today, the law clothes her with the presumption of innocence?

A. Yes.

Q. And that that presumption goes with her throughout this entire trial?

A. Yes, sir.

Q. And if you are accepted as a juror in this case, do you feel that you can accord to her the benefit of that presumption?

A. Yes.

Q. I take it then if you are accepted as a juror in this case, that you would require the prosecution to prove to your satisfaction, to a moral certainty and beyond a reasonable doubt the guilt of Mrs. Duncan, is that correct?

A. Yes.

Q. And as long as you entertained a reasonable doubt as to her guilt, you would not hesitate to resolve that doubt in her favor, is that correct?

A. (The prospective witness shook her head negatively.)

Q. Now, if you are accepted as a juror in this case, [fol. 383] you realize that there are two sides to a lawsuit, do you not?

A. Yes.

Q. Do you feel that you could keep your mind open respecting the guilt or innocence of Mrs. Duncan until you have heard all of the evidence?

A. Yes.

Q. You know it is not like walking into an art gallery and looking at some famous painting. When you first glance at it, you see the entire painting. But if you want to listen, let's say, to Beethoven's Ninth Symphony, you have to listen from the beginning to the end to realize what the composer had in mind. You understand that, don't you?

A. Yes.

Q. And a lawsuit is much the same way. You have got to hear all of the evidence before you can understand the case. You feel that you can keep your mind open until you have done so, is that correct?

A. Yes.

Q. Do you subscribe to any newspaper?

A. Ventura Free-Press.

Q. Ventura Free-Press. And any other paper?

A. No, sir.

Q. Do you sometimes listen to a news broadcast on the radio?

A. Sometimes.

Q. Your local Ventura radio station?

[fol. 384] A. Sometimes.

Q. And in addition to that, do you sometimes see and hear television news broadcasts?

A. Sometimes.

Q. Do you recall whether or not you have in the past read anything about this case?

A. Yes, I have.

Q. And do you recall whether or not you read any newspaper articles which purported to relate the testimony of witnesses before the Grand Jury?

A. No, I didn't read that.

Q. You didn't read that?

A. No.

Q. Do you recall whether or not you read any articles which purported to relate a confession of one Augustine Baldonado?

A. No, I didn't read that.

Q. Do you recall whether or not you read any articles which purported to relate a confession of one Luis Moya?

A. No, I didn't read it.

Q. Do you recall whether or not you listened to any radio broadcasts which purported to relate a confession of one Luis Moya?

A. No, I didn't hear that.

Q. Do you recall whether or not you read any newspaper articles purporting to relate statements concerning this [fol. 385] case by Mr. Roy Gustafson?

A. No, I did not.

Q. Well, did you hear any radio broadcasts concerning this case?

A. No, I didn't.

Q. Did you hear any television broadcasts concerning this case?

A. No.

Q. From what you read in the newspaper, did it cause you to form any opinion regarding the guilt or innocence of Mrs. Duncan?

A. Well, when I first read it, yes.

Q. When you first read it, you did form some opinion?

A. Yes.

Q. Regarding her guilt or innocence, is that correct?

A. Yes.

Q. Was that an opinion which was adverse to her?

A. Yes.

Q. Did you at any time discuss this case with any other person or persons?

A. Only the family.

Q. Only the family. No outsiders?

A. No outsiders.

Q. How many members of your family did you discuss this with?

A. Four.

[fol. 386] Q. And was that discussion in relation to something that you had read in the newspaper?

A. Yes, when it first came out.

Q. When it first came out. Do you still entertain that same opinion that you formed when you first read something about this case?

A. No, because I don't know both sides.

Q. Pardon?

A. No, because I don't know both sides.

Q. In other words, did you entertain that opinion for some time?

A. No. I just never thought more about it.

Q. But you told me that you originally formed an opinion that was——

A. Yes, I originally formed an opinion and then I forgot about it. I put it out of my mind.

Q. You put it out of your mind. And do you know how long you entertained that opinion?

A. No.

Q. Have you read anything recently in the newspapers concerning this case?

A. No.

Q. Do you know approximately how long it has been since you read anything concerning it?

A. Well, I haven't read much in the last few weeks at all.

[fol. 387] Q. In the last few weeks?

A. No.

Q. Well, as a result of the opinion which you did form sometime past, would that be apt to influence your verdict in this case in any way?

A. No.

Q. You feel that you could completely lay that opinion aside and decide the guilt or innocence of Mrs. Duncan solely and exclusively from the evidence that you hear in this courtroom?

A. Yes, sir.

Q. Well, let's assume that you were the person on trial here today, charged with the identical offense charged against Mrs. Duncan, and you wanted to be tried at the hands of 12 men and women who would be absolutely fair and impartial, who would render an unbiased and unprejudiced verdict. Do you feel that you could reach such a trial at the hands of 12 people of your present frame of mind?

A. Yes, I do.

Q. Now, do you know of any reason whatsoever that you could not render a fair and impartial verdict in this case?

A. No, I don't.

Mr. Sullivan: Thank you. Pass for cause.

Mr. Gustafson:

Q. Mrs. Garrison, you don't know Mr. Sullivan or Mr. Frank Duncan or Mrs. Duncan, do you?

[fol. 388] A. No, I don't.

Q. You don't have any prejudice against law enforcement officers, do you?

A. No, I don't.

Q. And you would judge the testimony of a law enforcement officer or, for that matter, any other witness, by exactly the same rules as the Judge tells you you are to judge them by?

A. Yes.

Q. Those rules in judging and weighing the credibility that you are to have of the witness, as to whether you should believe him or not, are the same as to all witnesses?

A. Yes.

Q. I don't mean that you believe them all the same but the same rules are applicable?

A. Yes.

Q. Now, Mr. Sullivan has mentioned that there are two sides to the lawsuit and, of course, on some points but not all points there will be disputes in the evidence. One witness will say, "This is the fact," and another witness will say the exact opposite is the fact. You will do your duty, as I understand, if you are selected as a juror, to try to decide which is the fact, which witness is telling the truth?

A. Yes.

Q. Which evidence is to believe and which evidence is to

[fol. 389] be rejected, is that correct?

A. Yes.

Q. And in doing that, if after you hear that evidence, you are convinced beyond a reasonable doubt that Mrs. Duncan is guilty, you wouldn't hesitate to vote that way, would you?

A. No.

[fol. 390] Q. And I take it then from your answers that the mere fact that there is a conflict in the evidence

wouldn't cause you to throw up your hands and say, "Well, absolutely, I can't decide the case so long as there are two sides. I have a reasonable doubt simply because there are two sides"? You wouldn't do that, would you?

A. No, sir.

Q. Now, if through the presentation of this case you should by the end of it have some sympathy for Mrs. Duncan, would you allow that sympathy to govern your verdict or would you follow the instruction of the Judge, that sympathy is not to enter into your deliberations on the verdict of whether she is or isn't guilty?

A. I would follow the rule.

Q. You would follow the rule the Judge gives you?

A. Yes.

Q. And you would exclude from your mind and your consideration any sympathy that might be engendered; is that correct?

A. Yes, sir.

Q. Now, do you have any conscientious objection to the death penalty which would preclude you from voting for a verdict of guilty of an offense which might carry the death penalty?

A. No, sir.

Q. Do you have any conscientious opinion with respect [fol. 391] to the death penalty which would preclude you from applying it to any person guilty of murder in the first degree who did not personally do the killing?

A. No, sir.

Q. Do you have any conscientious opinion concerning the death penalty or its application which would cause you to say that in a case where you otherwise would impose the death penalty sitting as a juror, you wouldn't do it because the defendant is a woman?

A. No.

Q. Now, Mrs. Garrison, I think you understood from the questioning that was made of other jurors that I am not required—the Judge has already told you what the burden of my proof is, and so has Mr. Sullivan—I am not required to prove the case except beyond a reasonable doubt; I don't have to, in other words, prove it beyond any doubt whatever. Do you have any prejudice or quarrel with that sort of a proposition?

A. No, sir.

Q. You are willing to accept that as a rule of law and follow it?

A. Yes, sir.

Q. You wouldn't then require me to prove a case that by standards of conduct would be impossible to prove; namely, beyond any doubt whatever; is that right?

A. Yes, that's right.

[fol. 392] Mr. Gustafson: Pass for cause.

The Court: All right. Mr. District Attorney, I have that you have exercised only one peremptory; is that correct?

Mr. Gustafson: That is correct.

The Court: All right, the peremptory is with the People.

Mr. Gustafson: I accept the jury as now constituted.

The Court: Now the peremptory is with the defendant.

Mr. Sullivan: The defendant will excuse Mr. Norman E. Batten, Juror No. 4.

The Court: Draw another name.

The Clerk: Loretta T. Beall, B-e-a-l-l.

The Court: Is it Mrs. Beall?

The Prospective Juror: Yes.

The Court: Where do you live, Mrs. Beall?

The Prospective Juror: Thousand Oaks.

The Court: Thousand Oaks?

The Prospective Juror: Yes.

The Court: How long have you lived in Ventura County?

The Prospective Juror: About 13 years.

The Court: Have you ever served on a jury?

The Prospective Juror: No.

The Court: Well, you have been here in the courtroom long enough so that you know what the case is all about, haven't you?

The Prospective Juror: Yes.

The Court: And if you should serve on the jury, could [fol. 393] you be fair and impartial?

The Prospective Juror: Yes.

The Court: All right, you may inquire.

Mr. Sullivan: Thank you, your Honor.

Q. Is it Miss Beall or Mrs. Beall?

A. Mrs. Beall.

Q. Did I understand you to indicate to the Court that you had not had previous experience as a trial juror?

A. Yes, I never have.

Q. All right. May I inquire as to your business or occupation, Mrs. Beall?

A. I'm a housewife.

Q. Is there a Mr. Beall?

A. Yes, there is.

Q. May I inquire as to his business?

A. He is a builder for Harry Shaw, Thousand Oaks.

Q. Mrs. Beall, you understand from what you have already heard the nature of the charge that is contained in this indictment, do you not?

A. Yes.

Q. And you further understand that the alleged victim of this alleged murder is one Olga Duncan?

A. Yes, sir.

Q. If the evidence in this case should disclose that Olga Duncan was the daugther-in-law of Elizabeth Duncan, my client, would that cause you to entertain any bias or preju- [fol. 394] dice against Mrs. Duncan?

A. No.

Q. If the evidence should further disclose that Olga Duncan at the time she came to her death was then pregnant, would that fact cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. Have you or has any member of your family or anyone near and dear to you ever been the victim of a crime of assault or passion?

A. No, sir.

Q. Or ever had occasion to testify as a witness against any person charged with such a crime?

A. No, sir.

Q. Have you ever been or has any member of your family or anyone near and dear to you been connected in any manner with any law enforcement agency?

A. Not to my knowledge.

Q. Not to your knowledge. It may be possible that law enforcement officers may testify as witnesses in this case. If any such witness should be called, would you be apt to give any greater credence to his or her testimony merely because they happened to be law enforcement officers?

A. No, sir.

Q. Do you feel that you could weigh and consider the testimony of such a witness by the same standard as you [fol. 395] would that of any other witness?

A. Yes, sir.

Q. You understand from what you have already heard that at the conclusion of this trial the Court is going to instruct you upon the law applicable to this case?

A. Yes, sir.

Q. You understand that?

A. Yes.

Q. You feel that you would be willing to accept the law as given to you by his Honor and apply it to the evidence in this case irrespective of whether you thought it was good law or bad law?

A. Yes, sir.

Q. You would attempt, to the best of your ability, to follow that law, would you?

A. Yes.

Q. You further understand, do you not, from what you have already heard that the law presumes Mrs. Duncan to be innocent of the offense charged in this indictment?

A. Yes, sir.

Q. And that that presumption goes with her throughout this trial?

A. Yes, sir.

Q. If you are accepted as a juror in this case, would you require the prosecution to prove to your satisfaction, to a moral certainty and beyond a reasonable doubt the [fol. 396] guilt of Mrs. Duncan?

A. Yes, sir.

Q. Let's assume that you are accepted as a juror in this case; that you have heard all of the evidence not only that offered on behalf of the prosecution, but any evidence offered on behalf of Mrs. Duncan. You have received the instructions on the law from his Honor. You retire to the jury room. You have discussed this matter fully and fairly among your fellow jurors. You have conscientiously endeavored to apply the evidence to the law as given to you by His Honor, and then you say to yourself, "Well, I conscientiously entertain a reasonable doubt as to Mrs. Duncan's guilt." Under those circumstances would you hesitate to vote for a verdict of not guilty?

A. No, I wouldn't hesitate.

Q. Would you continue to vote for such a verdict so long as you honestly and conscientiously entertained a reasonable doubt of her guilt?

A. Yes.

Q. Do you subscribe to any newspapers?

A. To the Ventura Star-Free Press and the Mirror-News.

Q. The Mirror?

A. Yes, sir.

Q. That is a Los Angeles newspaper?

A. Yes, sir.

Q. And the Ventura Star-Free Press?

[fol. 397] A. Yes.

Q. Do you ever read the Oxnard paper?

A. No.

Q. Do you sometimes listen to newscasts on the radio?

A. Yes.

Q. Do you listen to the local station here?

A. No, I don't.

Q. Mostly from the Los Angeles stations?

A. Well, my children always have on "Mighty 690."

Q. You don't have any control over the station you listen to?

A. Not very often.

Q. I understand that. Do you sometimes listen to newscasts on television?

A. No.

Q. You have got the westerns on. Well, let me ask you this: As a result—withdraw that.

Have you read anything in the newspaper, whether it be the Ventura paper or the Los Angeles Mirror or any other paper, concerning this particular case?

A. Yes.

Q. Did you read any articles which purported to relate the testimony that was given before the Grand Jury which returned this indictment?

A. Yes.

[fol. 398] Q. Your answer was "Yes"?

A. Yes.

Q. Did you read any statements in any newspapers which purported to relate a confession of one Augustine Baldonado?

A. Yes, I believe I read that.

Q. Did you read any articles which purported to relate a confession by Luis Moya?

A. Well, I read about it, something about their confessions, both of them.

Q. I realize you can't recall all the details of what you read, but you do have a distinct recollection of having read——

A. Yes.

Q. —something in the newspaper about those two gentlemen confessing to this crime; is that correct?

A. Yes, sir.

Q. Do you recall having read anything in connection with those confessions wherein they implicated Mrs. Duncan in this particular offense?

A. Yes, sir.

Q. Do you recall whether or not you heard any radio broadcasts which purported to relate the confession of one Luis Moya?

A. No, I didn't hear it.

Q. You didn't hear that. Well, in addition to what [fol. 399] you read, did you discuss this case with anyone?

A. Well, a few women out there.

Q. That was friends of yours?

A. Yes, sir.

Q. They likewise discussed the case with you?

A. Yes.

Q. As a result of what you read and the discussion you had with these ladies concerning this case did you, yourself, form any opinion with respect to the guilt or innocence of Mrs. Duncan?

A. Well, I guess I did, first.

Q. Well, you only would know whether you did.

A. Well, yes.

Q. All right. Did you express that opinion to the ladies with whom you discussed this case?

A. No, I didn't.

Q. The opinion which you formed with respect to the guilt or innocence of Mrs. Duncan, was it an opinion that was adverse to Mrs. Duncan?

A. Yes.

Q. Can you tell me approximately when you last read anything in the newspapers concerning this case?

A. Well, anything at all?

Q. Yes.

A. I read something about it last night, about the jury picking.

[fol. 400] Q. You read something about the proceeding that has been taking place?

A. Yes.

Q. Here in court concerning the selection of the jury: is that correct?

A. Yes.

Q. This Ventura Free-Press that you subscribe to, have you been subscribing to that paper for some time last past?

A. Yes.

Q. Approximately how long?

A. Well, four years.

Q. About four years. Well, do you still entertain the opinion which you have previously formed concerning the guilt or innocence of Mrs. Duncan?

A. No.

Q. You have at some time in the past abandoned that opinion?

A. Well, I feel before you should have a strong opinion you should hear more of both sides of the case.

Q. Well, let me ask you this: Do you have what we might call a weak opinion as you sit in the jury box today?

A. Well, I suppose so.

Q. Pardon?

A. Yes, I think so.

Q. And that opinion, whether it be weak or whether [fol. 401] it be strong, that you entertain as you sit in the jury box today is one that is adverse to Mrs. Duncan?

A. No, I don't believe so.

Q. The opinion which you entertain as you sit in the jury box today, is it one that is favorable to Mrs. Duncan?

A. Well, I don't know. Maybe I don't have an opinion because I really don't know either way.

[fol. 402] Q. Well, I can't tell you whether you have or not. I'm afraid you are the only one that can tell me.

A. I don't feel either way about it, whether she is or whether she isn't.

Q. Well, let me ask you this question: You have told me that at some time in the past you formed an opinion that was adverse to Mrs. Duncan?

A. Yes.

Q. Now, if you are accepted as a juror in this case, is it going to take some evidence on the part of the defense for you to overcome that opinion?

A. Well, naturally it would.

Q. In other words, the opinion is such that it would throw some burden upon we of the defense to cause you to overcome that opinion, is that correct?

A. Yes.

Q. You feel that the burden of overcoming that opinion is shifted on the shoulders of Mrs. Duncan and upon me as her attorney, is that correct?

A. Well, no. I would say that the District Attorney would have some proving to do himself.

Q. All right. Suppose that you didn't hear any evidence?

A. Well, I would——

Q. Just a moment. Let me finish my question. I didn't mean to interrupt you. Supposing that you didn't hear [fol. 403] any evidence on the part of the defense in this case, that we didn't present any evidence for you. Would the opinion which you formed in the past have some influence upon your verdict?

Mr. Gustafson: I'm going to object to that, Your Honor, as not being a complete question, in that it doesn't tell the juror that the Court would instruct *would instruct* the jury that the prosecution must prove the case by evidence in the courtroom beyond a reasonable doubt.

The Court: Well, that is the law, of course. The objection is sustained.

Mr. Sullivan:

Q. Let me ask you this question, Mrs. Beall: Assume the fact that some time in the past you did form an opinion adverse to Mrs. Duncan and that as you sit in the jury box today you have some kind of an opinion, perhaps a weak opinion, and let's assume that you are the lady seated at the counsel table here today in that chair that is now occupied by Mrs. Duncan, and you are charged in this particular indictment, returned by the grand jury of this county, with the identical offense charged against Mrs. Duncan, and you wanted to have your case tried before a jury of 12 men and women who would be absolutely fair and impartial, who

would render an unbiased and unprejudiced verdict. Would you want to rest your case in the hands of 12 men and women of your present frame of mind?

A. Yes, sir.

[fol. 404] Q. You feel that if you did that, that you could — absolutely satisfied with whatever verdict might be returned?

A. Yes, sir.

Q. Do you know of any reason whatsoever that you could not give to Mrs. Duncan a fair and impartial trial?

A. No, I don't.

Mr. Sullivan: Thank you, Mrs. Beall. Pass for cause.

Mr. Gustafson:

Q. Mrs. Beall, I take it that you don't know Mr. Sullivan, Mr. Frank Duncan or Mrs. Duncan?

A. No, sir.

Q. Now, let me ask you this, Mrs. Beall: Would you be willing to follow the instructions of Judge Blackstock, if you sit as a juror in this case, that you must decide the case solely on the basis of the evidence that you hear in court and that you are not to let any sympathy come into play, and govern your verdict one way or the other?

A. Yes, sir.

Q. You would do that?

A. Yes.

Q. And the mere fact, Mrs. Beall, for example, that I don't have a person sitting here as my client but I represent the People of the State of California, while Mr. Sulli-

[fol. 405] van has a person sitting there, Mrs. Duncan, as his client, would that cause you to be more favorable, or inclined to agree with h[illegible]ide of the case, whatever it may be, than with mine?

A. No.

Q. You will look at the evidence fairly and impartially, is that correct?

A. Yes, sir.

Q. And I think you understand from what has been said before, Mrs. Beall, that there probably will be several facts as to which there will be testimony in both directions; that is, one side maintaining that such and such is a fact and the other side maintaining that that isn't true at all, and

that it will be your duty as a juror to try and decide which is right? Do you think that you can do that?

A. Yes.

Q. Under the rules of law given to you by Judge Blackstock?

A. Yes.

Q. And you can apply those rules, whether you like them or not?

A. Yes.

Q. And will apply them whether you agree with them or not, is that correct?

A. Yes.

[fol. 406] Q. And in so doing, if the judge tells you that you can't vote guilty, you can't vote Mrs. Duncan guilty, unless I prove in court here by evidence that she is guilty, and prove it to your satisfaction beyond a reasonable doubt, then if you weren't so satisfied, you wouldn't hesitate to vote guilty, would you?

A. If I was satisfied?

Q. Yes.

A. Yes, I would.

Q. And you would vote that way if that was your conscientious opinion, even though 11 other jurors might be voting the opposite way, would you not?

A. Yes.

Q. As long as you still retained that conviction in your mind?

A. (The prospective juror nodded affirmatively.)

Q. On the other hand, you wouldn't just be stubborn about it for stubbornness sake? If you became convinced the other way, you would vote the other way?

A. Yes.

Q. Now with respect to this business that is conflicting; that is, evidence on one side that says one thing and on the other side that says the opposite thing, the mere fact that there might be differences in the evidence that way on the two sides of the case, that fact alone wouldn't cause you to [fol. 407] say, "Well, therefore, there can be proof beyond a reasonable doubt," would it?

A. No.

Q. In other words, you would recognize that it is your duty to try to decide which is correct?

A. Yes.

Q. And that is what you are here for?

A. (The prospective — nodded affirmatively.)

Q. If we didn't have any dispute about the facts, we wouldn't be here. Do you have, Mrs. Beall, and I want you to very seriously, conscientiously consider this question, because it is extremely important, do you have any conscientious opinion regarding the death penalty that would keep you from voting for a verdict of guilty of a crime, which could carry the death penalty?

A. No.

Q. And do you have any opinion with respect to the death penalty which would keep you from voting the death penalty, if you got to that issue; in other words, if Mrs. Duncan is found guilty of first degree murder and there was a second trial at which you were to decide what the penalty was, do you have any objection to the application of that penalty, if it was otherwise the appropriate thing to do in your mind, on the basis that the person didn't personally kill the victim but, instead, was guilty of murder in the first degree for encouraging or advising somebody else to do it?

[fol. 408] A. No, I wouldn't have any objection.

Q. You wouldn't refuse to apply it on that ground?

A. No.

Q. All right. Supposing that you had a case where the person is guilty of first degree murder and after you have heard the evidence with respect to the crime and the evidence with respect to the penalty, you have reached a conclusion in your mind that the appropriate penalty would be the death penalty. Would you refuse to apply the death penalty on the ground that the person to whom it would otherwise be applied is a woman?

A. No. I wouldn't refuse to apply it.

Q. In other words, you are not going to draw any distinction on that basis of sex and say that because it is a woman, it shouldn't be applied?

A. No, I wouldn't.

Mr. Gustafson: Pass for cause.

The Court: The peremptory is with the People.

Mr. Gustafson: I accept the jury as not constituted.

The Court: The peremptory is now again with the defendant.

Mr. Sullivan: The defendant will excuse Mrs. Loretta Kennedy, Juror Number Seven.

(The prospective juror was excused.)

The Clerk: Abr r A. Poteet, but I believe Mr. Poteet [fol. 409] was excused the first day by stipulation.

Mr. Gustafson: Yes. I have it marked that way.

The Clerk: On account of illness. Stephen—S-t-e-p-h-e-n "M"—Flynn—F-l-y-n-n.

The Court: Where do you live, Mr. Flynn?

The Prospective Juror: I beg your pardon.

The Court: Where do you live?

The Prospective Juror: Oxnard.

The Court: How long have you lived in this county?

The Prospective Juror: Thirty years.

The Court: Have you ever served on a jury?

The Prospective Juror: Never.

The Court: Never?

The Prospective Juror: Never.

The Court: You have been here in attendance on the court for some time, and you know what this case is all about?

The Prospective Juror: Yes.

The Court: And is there any reason why you couldn't give this defendant a fair and impartial trial, if you served on the jury?

The Prospective Juror: No.

The Court: You may inquire.

Mr. Sullivan:

Q. Mr. Flynn, may I inquire as to your business or occupation, please?

A. I sell welding and industrial supplies.

[fol. 410] Q. Are you married, Mr. Flynn?

A. Yes.

Q. You have a family?

A. Yes, sir.

Q. You understand from what you have already heard, the nature of the charge contained against my client, Mrs. Duncan, do you not?

A. Yes.

Q. And you further understand that the alleged victim of this alleged murder is one Olga Duncan?

A. Yes.

Q. If the evidence in this case should disclose that Olga Duncan was the daughter-in-law of my client, Elizabeth Duncan, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. Assuming that the evidence would show that Olga Duncan at the time she came to her death was then pregnant, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. Have you or has any relative of yours or anyone near and dear to you ever been connected with any law enforcement agency?

A. Yes.

Q. In fact, you yourself or some relative?

[fol. 411] A. Some relative.

Q. Is that a close relative?

A. Father and an uncle.

Q. Your father and an uncle. And may I inquire as to what capacity they were engaged in law enforcement activities?

A. My father was with the Highway Patrol in this county for a number of years. My uncle was a Justice of the Peace in Camarillo.

Q. At the present time?

A. No.

Q. He was?

A. He was.

Q. I see. Your father, however, is no longer connected with the Highway Patrol?

A. No.

Q. Well, in view of the fact that your father was connected with the Highway Patrol and your uncle was a Justice of the Peace in the past, would that fact cause you to give any greater credence to the testimony of a witness who would be a law enforcement officer?

A. No.

Q. In the event that a law enforcement officer should be called as a witness in this case, would you be apt to give

any greater credence to his testimony than you would that of any other witness?

[fol. 412] Mr. Gustafson: Objected to on the grounds that it has been asked and answered.

Mr. Sullivan: I didn't ask the question. I hadn't finished it yet. I will start over again.

Q. In the event that a law enforcement officer should be called as a witness in this case, would the fact that he was a law enforcement officer cause you to give any greater credence to his testimony than you would that of any other witness, merely because he happens to be a law enforcement officer?

A. No.

Q. You feel that you could weigh and consider the testimony of such a witness by the same standards as you would that of any other witness?

A. Yes.

Q. Now, have you or has any member of your family or anyone near and dear to you ever been the victim of a crime of assault or passion of any kind?

A. No.

Q. Have you ever had occasion to be a witness against any person charged with such a crime?

A. No.

Q. You understand from what you heard, that Mrs. Duncan as she sits in the courtroom today, is presumed to be innocent of the offense charged in this indictment?

A. Yes.

[fol. 413] Q. If you are accepted as a juror in this case, do you feel that you could accord to her the benefit of that presumption of law?

A. Yes.

Q. If you are accepted as a juror in this case, would you require the prosecution to prove to your satisfaction or to a moral certainty, beyond a reasonable doubt of the guilt of Mrs. Duncan?

A. Yes.

Q. Let's assume that you are accepted as a juror in this case, heard all the evidence, not only that offered by the prosecution but the evidence offered by the defense as well,

you have received the instructions on the law from His Honor, and you retired to the jury room, and you have discussed this matter fully and fairly among your fellow jurors, you have attempted to weigh this evidence in the light of the law as given to you by the court, and you then conscientiously entertain a reasonable doubt as to the guilt of Mrs. Duncan. Would you under those circumstances hesitate to resolve that doubt in her favor and vote for a verdict of not guilty?

A. No.

Q. Would you continue to do that as long as you conscientiously entertained a reasonable doubt as to her guilt?

A. Yes.

[fol. 414] Q. And would you do that irrespective of how your fellow jurors might feel about this matter?

A. Yes.

Q. Now, do you subscribe to any of the local papers?

A. Yes.

Q. What papers?

A. The Oxnard Press Courier.

Q. Any other local papers that you subscribe to?

A. No.

Q. Do you read any of the Los Angeles papers?

Mr. Gustafson: Your Honor, I am going to object again as I did yesterday, knowing full well that the court overruled that objection, on the grounds that these questions are incompetent, irrelevant and immaterial to the issue of whether the juror has in fact formed or expressed any opinion based on any newspaper articles. What papers the juror reads, what radio stations he listens to, what particular statements he read or listened to, are all irrelevant.

The Court: Yes. What particular statements he listened to or what papers he read, I think are irrelevant. He has a right to ask him if he read papers and if he heard broadcasts and so forth, but I don't think he has any right to ask him about the specific papers or specific radios or televisions. The objection is sustained.

[fol. 415] Mr. Sullivan: I think, Your Honor—

The Court: The objection is sustained as to that particular question.

Mr. Sullivan: All right.

Q. Have you read anything in the newspapers concerning this particular case?

A. Yes.

Q. Have you heard any radio broadcasts concerning this particular case?

A. Yes.

Q. Have you heard any television broadcasts concerning this particular case?

A. Yes.

Q. Have you read any articles in any newspaper purporting to report the testimony concerning this case that was taken before the grand jury?

A. Yes.

Q. And have you read any articles in any newspapers concerning or purportedly reporting a confession of one Augustine Baldonado?

A. Yes.

Q. Have you read any articles in any newspapers purportedly reporting a confession of one Luis Moya?

A. Yes.

Q. And insofar as those articles were concerned, did you read anything wherein either one of those men accused [fol. 416] my client, Elizabeth Duncan, of participation in this event?

A. Yes.

Q. Have you read any articles in any newspaper which purportedly reports his statements concerning this case made by Mr. Gustafson, the District Attorney?

A. Yes.

Q. Are you acquainted with Mr. Gustafson?

A. No.

Q. Are you acquainted with any of the deputies in his office or any members of his staff?

A. Yes.

Q. Is it a close acquaintance?

A. No, not at all.

Q. Is it with some of the deputies or with some other members of the staff?

A. I don't know his position but I went to school with one of the boys on the staff.

Q. May I inquire as to his name?

A. Osborne.

Q. Mr. Osborne. You don't know in what capacity he is employed in the District Attorney's office?

A. I haven't any idea.

Q. Well, the fact that you had gone to school with Mr. Osborne and the fact that this case is being prosecuted by the District Attorney of this county, and Mr. Osborne is an employee of that office, would that cause you to entertain [fol. 417] any bias or prejudice against my client?

A. No.

Q. In other words, you feel that you could be just as fair as though you never heard of Mr. Osborne?

A. Yes.

Q. All right. Now, from what you—withdraw that for a minute. Did you hear any radio broadcasts concerning this particular case?

A. Yes.

Q. Did you hear any radio broadcasts which purported to report the confession of one Luis Moya?

A. No.

Q. From what you read and from what you heard concerning this case, did you yourself form any opinion concerning the guilt or innocence of Mrs. Duncan?

A. Yes.

Q. And was that an opinion that was adverse to Mrs. Duncan?

A. Yes.

Q. And did you discuss this case with any person?

A. Yes.

Q. Did you hear it discussed?

A. Yes.

Q. And by many people?

A. Yes.

[fol. 418] Q. It was a common topic that was discussed quite generally, is that right?

A. Possibly. I don't know.

Q. Did you discuss it with many people?

A. Yes.

Q. Now, these people with whom you discussed this case or whom you heard discuss it, you do not know of your own personal knowledge whether the matters that they discussed with you, were matters that they have personal knowledge of, do you?

A. No.

Q. And I take it that you do not know whether any one or more of those persons are likely to become witnesses in this case, do you?

[fol. 419] Q. Were these people that you discussed it with people whom you trusted and had confidence in?

A. Yes.

Q. And did you believe the truth of what they said? Did you believe they were telling you the truth?

A. I don't understand what your—

Q. Well, whatever they said about it, did you think that they were truthful in their statement?

A. Do I think that they manufactured a story?

Q. Yes.

A. No.

Q. In other words, you had confidence in what they said was the truth; is that right?

A. What they read.

Q. Do you still entertain the opinion which you formed as a result of having read or discussed this case with other persons?

A. Yes.

Q. You have that opinion as you sit in the jury box today?

A. Yes.

Q. Is that an opinion that is adverse to my client, Elizabeth Duncan?

A. Yes.

Q. Is it such an opinion that it would require we of the defense to produce evidence to overcome it?

[fol. 420] A. Yes.

Q. Is it such an opinion that you feel you could not act fairly and impartially in this matter?

A. No.

Q. You say you still have the opinion as you sit in the jury box today. Do you think that the opinion which you formed in the past, and which you now entertain as you sit in the jury box at this moment, would have a tendency to influence your verdict in this matter?

A. No.

Q. You feel that you can completely lay that opinion aside and decide this case solely and exclusively from the evidence as you hear it in this courtroom?

A. Yes.

Q. Let me ask you this, Mr. Flynn: Suppose that your wife were on trial here today charged with this identical offense, and you wanted her to receive a trial at the hands of 12 men and women who were absolutely fair and impartial and who would render an unbiased and unprejudiced verdict. Would you be willing to trust the fate of your wife in the hands of 12 men and women of your present frame of mind?

A. No.

Q. You don't feel that you could receive a fair and impartial trial at the hands of 12 people of your present frame of mind; is that it?

A. I wouldn't want to.

[fol. 421] Q. You wouldn't want it because you are in love with your wife, and so someone near and dear to you, you wouldn't want to have them put their fate in the hands of people of your present frame of mind; isn't that it?

A. Yes.

Q. But you feel differently if it is a stranger?

A. I don't understand it. Now, you—

Q. Well, I mean that you feel that you wouldn't mind having some strange person submit their fate to the hands, to 12 people of your present frame of mind; is that it?

A. I would object, yes. Maybe you better ask me again.

Q. Maybe I don't make myself clear, Mr. Flynn. I will withdraw that last question.

You don't feel that 12 men and women of your present frame of mind could render a fair and impartial verdict if your wife were the person charged with this offense; isn't that it?

A. Yes.

Mr. Sullivan: I will challenge this juror for cause, your Honor.

Mr. Gustafson: I would like to examine the juror, your Honor.

The Court: All right.

Mr. Gustafson: Mr. Flynn, let's see if we are understanding each other with respect to terms. I understand that from what you read and discussed with others you have [fol. 422] an opinion adverse to Mrs. Duncan with respect to the charge with which she is going to be on trial. Now, if

the Judge decides that notwithstanding that opinion; in other words, accepting the fact that you do have that opinion, you did have it and you still have it, if despite that opinion and notwithstanding it, you can act fairly and impartially, then you are not disqualified as a juror.

Now, would you, if you were chosen to serve as a juror, follow the instruction of Judge Blackstock that you must decide the case solely on the basis of the evidence that you hear and see presented in court?

A. Yes.

Q. And you would not then consider anything you may have read in the newspapers or heard discussed and consider that as evidence, would you?

A. I would not.

Q. You would not. All right, now, if the Judge tells you that I must prove by the evidence here in court that Mrs. Duncan is guilty before you can vote for a verdict of guilty, and if after the case is over I haven't presented any such evidence that convinces you beyond a reasonable doubt of Mrs. Duncan's guilt, would you follow Judge Blackstock's instructions and vote for a verdict of not guilty?

A. Yes.

Q. Despite the fact that your opinion from what you [fol. 423] read in the newspapers was that Mrs. Duncan was guilty; isn't that true?

A. Yes.

Q. So that you will not allow the opinion that you formed before and that you now have to influence your verdict in any degree whatever, would you?

A. I would not.

Q. And if the Judge tells you that I have to prove this case by evidence in court here beyond a reasonable doubt, then even though it might take evidence to remove your opinion of Mrs. Duncan's guilt based on what you read in the newspaper, nevertheless, for the purposes of the verdict you would vote that she is not guilty, would you not, if I don't produce evidence to prove it?

A. Yes.

Q. Now, is there anything that we have talked about, either Mr. Sullivan or I, to these other prospective jurors over the last two days concerning rules of law which might be applicable in this case, presumption of innocence of Mrs.

Duncan, the burden of proof that is on me, and so forth, with which you disagree and which you wouldn't follow if the Judge told you to follow it?

A. No.

Q. Nothing whatever?

A. Nothing.

Q. Well, now, then your frame of mind then, Mr. Flynn, [fol. 424] is that you would follow all of the instructions of the Court, you would act only upon the evidence you hear in court, and you would act fairly and impartially; isn't that true?

A. Yes.

Q. And yet you would object having your wife tried by a person with a frame of mind of being fair and impartial and following the instructions of the Judge?

A. I have a very difficult time assuming my wife is sitting in this courtroom with this charge.

Q. Of course, you do, but, in other words, really, isn't—true, Mr. Flynn, that with respect to your frame of mind—not your opinion about Mrs. Duncan's guilt—but your frame of mind as to how you would sit and act as a juror in this case is one which you would like to have in 12 persons who might be trying you, your wife, a member of your family or anybody else; isn't that true?

A. Despite my opinion?

Q. Yes.

A. Yes.

Mr. Gustafson: I submit the juror is qualified, your Honor.

Mr. Sullivan: I think this juror has testified or stated under oath that the opinion which he now holds is going to place some burden on the defense in this case to overcome that opinion. He has indicated to this Court that he wouldn't want the fate of his wife to rest in the hands of 12 people of his present frame of mind because he doesn't feel [fol. 425] that she could get a fair and impartial trial. I think that definitely disqualifies him and the challenge for cause should be allowed. We have a pretty serious charge contained here, your Honor, and your Honor knows what publicity this case has attained.

Mr. Gustafson: Your Honor, this is a very typical case that falls exactly within Section 1076 of the Penal Code and for which that provision was specifically applicable.

There is a recognition in that section that a person may form an opinion based upon newspaper accounts and by public rumor, statements in public journals, circulars or other literature or common notoriety, and that that does not disqualify him from sitting as a juror, provided that it appears to you upon the declaration of the prospective juror that the prospective juror can and will, notwithstanding such an opinion, which, of course, assumes that the juror still retains the opinion, that notwithstanding such an opinion act impartially and fairly upon the matter to be submitted to him.

That is this very case, your Honor, and by couching his questions in the terms of opinions, will it take evidence to remove the opinion, Mr. Sullivan is not stating the matter within the grounds of qualifications as set forth in the Code.

I cite to the Court the case——

Mr. Sullivan: I'm going to object to counsel's reading any decisions in the presence of this jury. I have no objection to him referring to it, calling them to the Court's atten-
[fol. 426] tion. If we are going to argue the legal principles involved here, then I think we should excuse the jury.

Mr. Gustafson: That is perfectly satisfactory to me, your Honor.

The Court: Well, we would have to excuse the whole crowd.

Mr. Sullivan: That is what we would have to do, your Honor.

The Court: Just refer to the case then.

Mr. Gustafson: Well, your Honor, it is—

The Court: I think I know the case, anyway.

Mr. Gustafson: There are two cases here, your Honor. One is People versus Wolff, W-o-l-f-f, 1920, 182 Cal., 728, which involved the very same declaration by a juror as was made here. The other is People versus Wallace, 1936, 6 Cal. 2nd., 759 at Page 764.

The Court: Well, Mr. Flynn, you would be willing to follow all of the instructions of the Court, wouldn't you?

The Prospective Juror: Yes.

The Court: As far as the law is concerned?

The Prospective Juror: Yes.

The Court: And if I tell you that the defendant is not required to prove anything, you would follow that instruction, wouldn't you?

The Prospective Juror: Yes.

The Court: Did you mean to say that you would require [fol. 427] the defendant to prove her innocence before you would find her not guilty? Did you mean to say anything like that?

The Prospective Juror: No, not at all, not at all.

The Court: The People must prove her guilty beyond a reasonable doubt before she can be convicted.

The Prospective Juror: This business of having my wife in here is what throws me.

The Court: You would require the District Attorney here to prove her guilty beyond a reasonable doubt before you would vote guilty?

The Prospective Juror: Yes.

The Court: Regardless of any opinion that you have or ever had?

The Prospective Juror: Yes.

The Court: And you would predicate your verdict absolutely and entirely upon the evidence adduced here in court and nothing else?

The Prospective Juror: Yes.

The Court: Well, if you were charged with the same kind of a crime and you had 12 jurors that were willing to predicate their verdict upon the evidence adduced in court, regardless of any opinion that they might have, wouldn't you be willing to be tried by such a jury?

The Prospective Juror: Would I? Yes.

The Court: Yes? What?

The Prospective Juror: Yes.

[fol. 428] The Court: The challenge is disallowed.

Mr. Sullivan: I have no further questions of Mr. Flynn.

The Court: We better take a brief recess, hadn't we?

All right, ladies and gentlemen, we will take a brief recess.

(Short recess.)

Mr. Gustafson:

Q. Mr. Flynn, you don't know Mr. Sullivan, Mr. Frank Duncan or Mrs. Duncan, do you?

A. No.

Q. And you wouldn't require me, if the Judge says that all I need do to prove Mrs. Duncan guilty is to prove it to your satisfaction beyond a reasonable doubt, you wouldn't require me to go any further than that, would you, before you would vote a verdict of guilty?

A. No.

Q. You would accept the Judge's instructions and the law that in human affairs and situations like this it is impossible to prove a thing beyond any doubt whatever?

A. Yes.

Q. Now, in deciding this case I believe you have already said you would decide it solely on the basis of evidence presented here. Would you apply to that evidence the instructions given to you by Judge Blackstock?

A. Yes.

Q. As to the law?

(Prospective juror nods head affirmatively.)

[fol. 429] Q. And if you were convinced beyond a reasonable doubt that Mrs. Duncan was guilty, you would continue to vote that way despite what other jurors may vote?

A. Yes.

Q. And you would only vote a different way if you became convinced in your own mind that the evidence was such that you should vote a different way: isn't that correct?

A. Yes.

Q. Now, would you be able to and would you actually disregard any sympathy that might be engendered for Mrs. Duncan in determining whether she is guilty or not guilty?

A. No.

Q. If the Judge told you that you cannot allow sympathy to enter into your verdict of whether she is guilty, would you follow that instruction?

A. Yes.

Q. You, therefore, would not allow that factor to influence your verdict, would you?

A. I would not.

Q. You would not. All right. Now, with respect to the penalty, assuming that you probably have got it from what was said before, the first part or portion or phase of this trial will be simply whether she is guilty or not guilty.

Now, assume that the first phase is over and that this jury has returned a verdict that she is guilty of murder in the first degree. That would mean there would follow a second portion of the trial wherein you would hear evidence [fol. 430] and then retire again to deliberate as to whether the penalty should be life imprisonment or death in the gas chamber. Do you now hold any conscientious opinion which would preclude you from voting for the death penalty?

A. No.

Q. And do you have any kind of mental reservation at this time which would preclude you from voting for the death penalty of a person who is guilty of first degree murder simply because that person didn't personally do the killing?

A. No.

Q. Assume that you have found that the person was guilty of first degree murder and that the death penalty to you seemed to be the appropriate penalty to apply. Would you refuse to apply it because the defendant is a woman?

A. No.

Mr. Gustafson: Pass for cause.

The Court: All right, the peremptory is with the People.

Mr. Gustafson: I accept the jury as now constituted.

The Court: The peremptory is with the defendant.

Mr. Sullivan: The defendant will excuse Mrs. Susie F. Saavedra, Juror No. 10.

The Court: Call another name.

The Clerk: The next one, your Honor, was excused, I believe, on the opening day. Goldie M. Ferry was excused on the opening day by stipulation.

[fol. 431] Artie Robinson, R-o-b-i-n-s-o-n. The first name is Artie, A-r-t-i-e, initial "A".

The Court: Mr. Robinson, you live in Ventura County, do you not?

The Prospective Juror: Yes, sir.

The Court: You have been in attendance here on the Court long enough so that you know what this case is all about?

The Prospective Juror: I do.

The Court: You have heard everything that has been said here?

The Prospective Juror: (Nods head affirmatively.)

The Court: If you should serve on this jury, could you be absolutely fair and impartial?

The Prospective Juror: I am sure I could, but I don't believe I should try to serve, Judge, because I am under doctor's orders that I should go home every day at 3:30 and go to bed.

The Court: Do you want to excuse him by stipulation?

The Prospective Juror: I can produce a letter, if you want.

Mr. Sullivan: I will stipulate, your Honor.

Mr. Gustafson: So stipulated.

The Court: All right, you are excused.

The Prospective Juror: I can get a letter, if you want it.

The Court: You are excused.

[fol. 432] (Prospective juror excused.)

The Court: Call another name.

The Clerk: Robert L. Sechrest. I believe it is S-e-e-h-r-e-s-t.

The Court: Where do you live, Mr. Sechrest?

The Prospective Juror: Ojai.

The Court: What?

The Prospective Juror: Ojai

The Court: How long have you lived in Ventura County?

The Prospective Juror: Five years.

The Court: Have you ever served on a jury?

The Prospective Juror: No.

The Court: Any place?

The Prospective Juror: Pardon?

The Court: Did you ever serve on a jury any place?

The Prospective Juror: No.

The Court: You have been in attendance in court here some time. Have you heard everything that has been said here?

The Prospective Juror: Yes.

The Court: Do you know what the case is all about?

The Prospective Juror: Yes.

The Court: Is there any reason why you couldn't be absolutely fair and impartial to both sides if you should serve on this jury?

The Prospective Juror: Yes, sir, I have.

The Court: There is no reason why you couldn't?

[fol. 433] The Prospective Juror: There is a reason.

The Court: What?

The Prospective Juror: There is a reason.

The Court: Well, you may inquire.

Mr. Sullivan:

Q. Mr. Sechrest, is this reason why you can't serve by reason of the fact that you have formed some opinion regarding the guilt or innocence of Mrs. Duncan?

A. No, sir.

Q. Oh. What is the reason?

A. I do not believe in capital punishment.

The Court: You don't what?

The Prospective Juror: I do not believe in capital punishment.

The Court: Oh.

Mr. Gustafson: Challenge the juror for cause.

Mr. Sullivan: We object to the challenge on the grounds that——

The Court: All right, you are excused. Call another name.

The Clerk: Leandro, L-e-a-n-d-r-o, Franco, F-r-a-n-c-o.

The Court: Mr. Franco, you live at Oxnard?

The Prospective Juror: Yes, sir.

The Court: How long have you lived in Ventura County?

The Prospective Juror: All my life.

The Court: What?

The Prospective Juror: All my life.

[fol. 434] The Court: Have you ever served on a jury?

The Prospective Juror: No, sir.

The Court: You have been here in court long enough so that you know what this is all about?

The Prospective Juror: Yes.

The Court: Is there any reason why you couldn't be absolutely fair and impartial if you should serve on this jury?

The Prospective Juror: No, sir.

The Court: All right, you may inquire.

Mr. Sullivan:

Q. Mr. Franco, may I inquire as to your business or occupation, please?

A. I am an equipment oiler for Ventura County.

Q. I'm sorry?

A. Equipment oiler for Ventura County.

Q. An equipment oiler for Ventura County?

A. Yes.

Q. Are you married, Mr. Franco?

A. No, sir.

Q. Mr. Franco, you have been in court since last Monday?

A. Yes, sir.

Q. And, of course, you understand what the nature of the charge is that is contained in this indictment; is that correct?

A. Yes.

[fol. 435] Q. You understand that the alleged victim of this alleged murder is one Olga Duncan?

A. Yes, sir.

Q. Is there anything about the nature of that charge itself that would cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. Assuming that the evidence in this case should disclose that Olga Duncan was the daughter-in-law of my client, Elizabeth Duncan, would that fact cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. Assuming that the evidence should disclose that Olga Duncan at the time she came to her death was then pregnant, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. Have you or has any relative of yours or anyone near and dear to you ever been the victim of a crime of assault or violence?

A. No, sir.

Q. Or ever had occasion to be a witness against any person charged with such a crime?

A. No.

Q. Are you acquainted with Mr. Roy Gustafson, the District Attorney of this County?

[fol. 436] A. No, sir.

Q. Are you acquainted with any of the deputies or members of his staff?

A. No, sir.

Q. Have you ever been or has any relative of yours or anyone near and dear to you been connected in any manner with any law enforcement agency?

A. No, sir.

Q. Well, assuming that some law enforcement officer should testify as a witness in this case, would you be apt to give any greater credence to the testimony of such a witness merely because he happens to be a law enforcement officer?

A. No, sir.

Q. You feel that you could weigh and consider the testimony of such a witness?

A. Yes, sir.

Q. By the same standards as you would that of any other witness; is that correct?

A. Yes, sir.

Q. Well, let's assume that Mrs. Duncan sees fit to take the witness stand and testify as a witness in her own behalf. Would you be apt to deny her the benefit of her own testimony?

A. No, sir.

Q. Merely because she happens to be the defendant in this case?

[fol. 437] A. No, sir.

Q. You understand from what you have heard that as Mrs. Duncan sits in the courtroom today that the law clothes her with the presumption of innocence, do you not?

A. Yes, sir.

Q. In other words, she is presumed to be innocent of the murder that is charged against her in this indictment?

(Prospective juror nods head affirmatively.)

Q. If you are accepted as a juror in this case, do you think that you can accord to her the benefit of that presumption?

A. Yes, sir.

[fol. 438] Q. You think that you could accord her the benefit of that presumption throughout this entire trial, do you?

A. Yes, sir.

Q. If you are accepted as a juror in this case, would you require the District Attorney to prove to your satisfaction, to a moral certainty and beyond a reasonable doubt, the guilt of Mrs. Duncan?

A. I didn't understand that question.

Q. If you are accepted as a juror in this case, would you require the District Attorney to prove to your satisfaction, to a moral certainty and beyond a reasonable doubt, the guilt of Mrs. Duncan?

A. I still didn't understand it.

Q. You don't understand it?

A. No.

Q. Well, the law says she is presumed to be innocent until she is proven guilty beyond reasonable doubt. Now, it is up to the prosecution to prove her guilty beyond a reasonable doubt.

A. Yes, sir.

Q. She doesn't have to prove her innocence. Would you require her to prove her innocence?

A. No, sir.

Q. Well, if the court tells you that is the duty of the prosecution to prove her guilty beyond a reasonable doubt, [fol. 439] would you require the District Attorney to do that?

A. No, sir.

Q. What?

A. No, sir.

The Court: That is, it is the duty of the prosecution to prove her guilty beyond a reasonable doubt before she can be convicted? It is the duty of the District Attorney? It is not the duty for him to do anything unless he wants to, but unless he does prove her guilty beyond a reasonable doubt, she is entitled to be acquitted.

Mr. Sullivan:

Q. Do you understand what the court said?

A. In other words, is that after all the evidence comes up?

Q. Well, unless the prosecution approves Mrs. Duncan guilty beyond a reasonable doubt, she is entitled to an acquittal at the hands of the jury.

A. Yes, sir.

Q. Do you think that you understand that?
A. Yes.
Q. All right. Would you require the prosecution to do that, if you are accepted as a juror in this case?
A. Yes, sir.
Q. All right. Now, I am going to direct your attention to some names and ask you if you recognize any of these names or persons that you know: Clarence R. Henderson? [fol. 440] A. No, sir.
Q. D. Gordon Johnson?
A. No.
Q. Virgil L. Payton?
A. No, sir.
Q. Doreen Corraini—C-o-r-r-a-i-n-i?
A. No, sir.
Q. Sylvia Butler?
A. No.
Q. Luis Moya?
A. I don't recall. I probably know him but I don't probably know him by name.
Q. You may recall him but you don't know him by name?
A. Yes, sir.
Q. I am going to direct your attention to a photograph (indicating).
A. No, I don't know him.
Q. You don't know that person in that photograph?
A. Correct.

Mr. Sullivan: For the purpose of the record I think that it might be stipulated that I have directed the prospective juror's attention to a photograph of Luis Moya.
Mr. Gustafson: So stipulated.
The Court: He said that he did not recognize it, didn't he? [fol. 441] Mr. Sullivan: Yes, he said that he did not recognize it.

Q. Augustine Baldonado?
A. That sounds familiar.
Q. It sounds familiar?
A. Yes.
Q. Well, let me direct your attention to another photograph (indicating). Do you recognize that man?
A. No, sir, I don't.

Q. You don't recognize it?
A. No.

Mr. Sullivan: For the purpose of the record I have directed the prospective juror's attention to a photograph of Augustine Baldonado, Your Honor, and the prospective juror has stated that he does not recognize it.

The Court: And the District Attorney stipulates that it is a picture of Baldonado?

Mr. Gustafson: I so stipulate.

Mr. Sullivan:

Q. Hal V. Hammonds, Junior?
A. No, sir.
Q. Emma Short?
A. No, sir.
Q. Barbara Reed?
A. No, sir.
Q. Diana Romero?
[fol. 442] A. No, sir.
Q. Rudolph Molino Romero?
A. I don't believe I know him.
Q. You don't believe you do. You don't recognize the name, anyway?
A. No.
Q. Mary Ann Dowhower?
A. No.
Q. Dorothy Barnett?
A. No, sir.
Q. Do you know a woman by the name of Mrs. Esquivel?
A. Esquivel?
Q. Esquivel.
A. I don't believe I do.
Q. The name doesn't——
A. I heard it before but I don't think I know her.
Q. You don't think that you know her?
A. No.
Q. All right. Well, Mr. Franco, do you read some of the local newspapers?
A. Yes, sir.
Q. Do you read some of the papers, some of the Los Angeles papers, from time to time?

A. No, just the Oxnard paper.

Q. The Oxnard Press?

[fol. 443] A. Yes.

Q. Do you sometimes listen to news broadcasts on the radio?

A. Yes.

Q. And do you ever listen to newscasts on television?

A. Yes.

Q. Have you subscribed to one of the local papers or do you just buy it daily?

A. We buy it.

Q. You buy it daily?

A. Yes.

Q. Do you recall whether or not you have ever read anything about this particular case?

A. Yes.

Q. And did you hear any radio broadcasts concerning this particular case?

A. No.

Q. Do you recall whether or not you have ever read any newspaper articles which purported to report the testimony that was taken before the grand jury?

A. No.

Q. Do you recall whether or not you ever read any newspaper articles which purported to report a confession by one Augustine Baldonado?

A. No.

[fol. 444] Q. Do you recall whether or not you read any newspaper articles which purported to report a confession by one Luis Moya?

A. No.

Q. In addition to what you did read about this case, did you discuss it with anyone?

A. Yes.

Q. With many people?

A. No.

Q. Could you say approximately how many?

A. Oh, three or four.

Q. Three or four people. Are those people who were friends of yours, people that you knew?

A. Well, employees.

Q. Employees?

A. People I work with.

Q. I see. Were they people in whom you had confidence?
A. Well, yes and no.
Q. You trusted them?
A. Well, yes.
Q. They discussed this case with you?
A. Just part of it.
Q. Part of it?
A. (The prospective juror nodded affirmatively.)
Q. Did you believe that what they told you was the truth?
[fol. 445] A. I didn't know.
Q. You didn't know whether it was or not?
A. No.
Q. You had no reason to disbelieve?
A. No.
Q. You don't know of your own personal knowledge whether these people that discussed this case with you had any personal knowledge of the matters that they did discuss with you, do you?
A. No.
Q. And you don't know whether any of those people may become witnesses in this case or not, do you?
A. No.
Q. Well, as a result of what you have read concerning this case and having discussed it with other people, did you yourself form any opinion concerning the guilt or innocence of Mrs. Duncan?
A. No.
Q. You yourself formed no opinion concerning that?
A. No, I didn't.
Q. As you sit in the jury box here today, do you have any opinion whatsoever concerning her guilt or innocence.
A. Well, I can't say for sure.
Q. You don't know?
[fol. 446] A. That is right.
Q. You mean that you probably have an opinion?
A. Well, I might have one and yet I might not. I'm not sure myself.
Q. You are not sure of yourself?
A. No.
Q. Well, only you know your own mind.
A. Yes.

Q. And only you can tell me whether you do have that opinion, and all I want to know is, as you sit in the jury box today, whether you do have an opinion concerning her guilt or innocence.

A. I don't know.

Q. What?

A. I don't have it.

Q. So, as you sit here today, your mind is perfectly free from any opinion whatsoever regarding either the guilt or the innocence of Mrs. Duncan, is that it?

A. Yes.

Q. And you are accepted as a juror in this case, do you think that you could her guilt or innocence solely and exclusively from the evidence as you hear it in this courtroom?

A. Yes.

Q. Do you think that your verdict would be influenced in any extent by what you read about this case in the past [fol. 447] or by what you hear discussed about it?

A. Yes.

Q. What?

A. What was that again?

Q. I didn't think that you understood my question. You tell me that you read something about it?

A. Yes.

Q. And that you discussed it and heard it discussed to some extent. Now, if you are acting as a juror in this case, are you going to allow what you read in the newspaper about it or what you heard somebody else tell you about it or what you said to somebody else about it, are you going to allow that to influence your verdict?

A. No.

Q. Is that clear to you now?

A. Yes.

Q. Okay. All right, now, do you have any sisters?

A. Yes.

Q. Is your mother living?

A. No.

Q. Well, let's assume that you had a sister who was seated at the counsel table here today and was charged with the identical offense that is charged in this indictment against Mrs. Duncan. Instead of Elizabeth Duncan being seated here, your sister is here, going on trial today for

the offense that Mrs. Duncan is going on trial for. And [fol. 448] you wanted your sister to have a trial at the hands of 12 men and women who would be absolutely fair and impartial, who would render an unbiased and unprejudiced verdict. Would you be satisfied to place the fate of your sister in the hands of 12 men and women of your present frame of mind?

A. Well, yes.

Q. You think that you would?

A. Yes.

Q. Is there any doubt in your mind about it?

A. Well, no.

Q. Do you know of any reason why you could not give Mrs. Duncan a fair and impartial trial?

A. No.

Mr. Sullivan: Thank you. Pass for cause.

Mr. Gustafson:

Q. Is it Mr. Franco or Franeo?

A. Franco.

Q. Franco. Mr. Franco, you have heard the questions that I asked of the other 11 persons who remain seated in the jury box here and their answers to those questions concerning the burden of proof that I have in this case and the instructions that the Court will give you and how you must consider the evidence and so forth. Would your answers be any different as to any one of the questions than those given by the other 11 remaining prospective jurors?

A. I don't think so.

[fol. 449] Q. Did you have any trouble with any of the questions I asked before, or do you have some question in your mind as to what was meant by it?

A. Yes, I got some of them mixed up.

Q. You got some of them mixed up. Well, maybe we should go over some of them then. Let me ask you this: You would follow Judge Blackstock's instructions so far as the law is concerned, wouldn't you, Mr. Franco?

A. Yes.

Q. Whatever he told you was the law, you would apply that?

A. Yes.

Q. Even if you disagreed with it?

A. Yes.

Q. And then you would be the sole judge of the weight and the effect of the evidence in the case. You would try to do your best to judge that properly, wouldn't you?

A. Yes.

Q. And if there are two sides to the story, two different conflicting bits of testimony, one by one person and one by another, you would do your best to try to ascertain what was the truth?

A. Yes.

Q. And if that required you to disbelieve one witness and believe another, you go ahead and do that, could you [fol. 450] not?

A. Yes.

Q. And you would do it, wouldn't you?

A. Yes.

Q. Now, when the judge tells you that the burden that I have, to prove Mrs. Duncan guilty, is that I must prove her guilty only to your satisfaction, beyond any reasonable doubt, you would follow that instruction, too.

A. Yes.

Q. And you would not then require me, before you returned a verdict of guilty, to prove her guilty beyond any doubt whatever, would you?

A. I don't understand that question.

Q. Well, that is the one that you don't understand, isn't it Mr. Franco? Fine. Well, you see, we are sitting here in a courtroom talking about something that is alleged to have happened three months ago. You weren't there. These other people weren't there. I wasn't there. The judge wasn't there. The only way we can try to ascertain what the truth was, is through the testimony of witnesses and other evidence. And because we weren't there to see it and hear and so forth with our own eyes, and because it is coming to us second hand, so to speak, through the people here, we can never be absolutely positively sure, beyond any doubt whatever, about anything, when you have a courtroom trial, whatever kind of a trial it is. Do you under- [fol. 451] stand that?

A. Yes.

Q. And so therefore the law doesn't require me or anybody else to prove any case beyond any doubt whatever,

that being an impossibility. I simply have to prove it beyond a reasonable doubt. Now, if I prove it beyond a reasonable doubt, you wouldn't go into the jury room and say, "I'm not going to vote guilty, because he didn't prove it beyond any doubt whatever"? You wouldn't do that?

A. No.

Q. You are sure that you understand that?

A. Yes.

Q. All right: Now, if you felt yourself, if you were convinced beyond a reasonable doubt, that Mrs. Duncan is guilty, you would vote that way, wouldn't you?

A. No.

Q. You wouldn't vote that she was guilty, if you were convinced beyond a reasonable doubt that she was guilty?

A. Well, yes.

Q. And you would continue to vote that way, would you not, as long as you still felt that way about it?

A. Yes, sir.

Q. Now, if Mrs. Duncan is found guilty by a verdict of this jury of murder in the first degree, then you will come [fol. 452] back in the courtroom here and there will be some other evidence with respect to what penalty should be imposed upon her, and you as a juror will have to determine whether the penalty will be life imprisonment or death. Some people have conscientious opinions about the death penalty whereby they just wouldn't invoke the death penalty. Do you have a conscientious opinion against the death penalty that would preclude you from voting for a verdict which would carry the death penalty?

A. No.

Q. You are sure of that, Mr. Franco?

A. Yes.

Q. It is very important. Do you have any opinion with respect to when the death penalty should be applied and when it shouldn't, that would cause you to say that even though a person was guilty of first degree murder a person should not under any circumstances get the death penalty if that person didn't herself commit the actual killing?

A. Well, I just got a doubt about that.

Q. You do have a doubt?

A. Yes.

Q. In other words, so far as you are concerned——

A. It doesn't seem right to me.

Q. It doesn't seem right to you to impose the death penalty upon someone who didn't actually himself do the [fol. 453] killing, even though he is guilty under the law of first degree murder because he encouraged or advised somebody else to do it?

A. Well, that is hard to say.

Q. I know it may be hard to say and that is just what we want to get at, Mr. Franco. In other words, under the law the judge will tell you that it is possible that a person can be found guilty of first degree murder who did not personally kill somebody else but who did encourage or advise another person to kill somebody else?

A. Yes.

Q. So that that person who advised or encouraged the killing is guilty of first degree murder. Now, let me go back on that and ask whether you have any bias or prejudice against such a law that a person can be guilty of first degree murder even though he didn't personally do the killing?

A. Yes.

Q. Do you have such a prejudice?

A. No.

Q. You don't?

A. No.

Q. This doesn't seem unfair to you?

A. Well, when you put it that way, no.

Q. When I put it that way. In other words, you are willing then to follow that law?

[fol. 454] A. Yes.

Q. And you won't then go in the jury room and say, "Well, I don't like this kind of a law that says a person can be guilty of first degree murder that didn't actually personally do the killing"? You wouldn't say that, would you?

A. No.

Q. You would follow that law?

A. Yes.

Q. Now, if you come to the penalty part and you are on this jury and this jury has before it the issue of penalty, because the jury has already found the defendant guilty of first degree murder, are you now of the frame of mind that you would say, "I'll never vote the death penalty for a person who didn't personally do the killing"? Is that your frame of mind?

A. I don't understand that very good.

Q. Well, you understand what I have said before about a person can be guilty of first degree murder without actually himself doing the killing?

A. Yes.

Q. Now, suppose that we have got such a person up for consideration of penalty and it is your job to decide whether that person gets life imprisonment or death in the gas chamber. Would you say that simply because that person didn't personally kill but, instead, advised or en-
[fol. 455] couraged somebody else to kill, but because that person didn't personally kill; then the death penalty shouldn't be applied to such a person?

A. I would not.

Q. You wouldn't say that?

A. No.

Q. You could then apply the death penalty to a person who is guilty of first degree murder, even though that person didn't personally do the killing?

A. Yes.

Q. You have no objection on that ground?

A. No.

Q. Well, let me ask you further, Mr. Franco, with respect to a person who was up before you as a juror and it is your job to determine the penalty, whether in a particular case where you felt that that person was guilty of first degree murder and you felt from the nature of the evidence and of the crime and from the nature of the evidence on the issue of penalty, that that person ought to be penalized by death in the gas chamber, would you nevertheless say, "I will not vote such a verdict, because the person is a woman"?

A. No.

Q. You would not?

A. No.

Mr. Gustafson: All right. Pass for cause.

[fol. 456] The Court: All right. The peremptory is with the People, as I have it.

Mr. Gustafson: I accept the jury as not constituted.

The Court: All right, peremptory is again with the defendant.

Mr. Sullivan: Defendant will excuse Mr. Joseph T. Porter, Juror Number Nine.

(The prospective juror was excused.)

The Court: Call another name.

The Clerk: Lucy V. Knutson—K-n-u-t-s-o-n.

The Court: All right, the court is about to adjourn until —when do you want? Will 1:45 suit you?

Mr. Gustafson: Yes, sir.

Mr. Sullivan: Whatever is satisfactory to Your Honor.

The Court: 1:45?

Mr. Gustafson: That is satisfactory, Your Honor, to me.

The Court: All right, the Court will adjourn till 1:45 this afternoon.

(Whereupon, at 12:05 o'clock P.M. the court recessed proceedings until 1:45 o'clock.)

[fol. 457] Ventura, California, February 18, 1959; 1:45 o'clock P.M.

The Court: All right, we have a new prospective juror in the box, don't we?

Mr. Sullivan: Yes.

The Clerk: Mrs. Knutson.

The Court: Which number, which one is the last one?

The Clerk: Number 9, Mrs. Knutson.

The Court: No. 9. You have been here several days, haven't you?

The Prospective Juror: Yes.

The Court: You have heard everything that has been said here?

The Prospective Juror: Yes.

The Court: You know what the case is all about?

The Prospective Juror: Yes.

The Court: Would you give this defendant a fair and impartial trial if you should be on this jury?

The Prospective Juror: Yes, sir.

The Court: All right, you may inquire.

Mr. Sullivan:

Q. Mrs. Knutson, is it Miss or Mrs?

A. Mrs.

Q. You live in Fillmore?
A. Yes, sir.
Q. And how long have you lived in Fillmore?
[fol. 458] A. Oh, around 15 years.
Q. And may I inquire as to your business or occupation, Mrs. Knutson?
A. I work at the Camarillo State Hospital.
Q. Is there a Mr. Knutson?
A. Yes.
Q. May I inquire as to his business or occupation?
A. He works for an oil contractor in Fillmore.
Q. Have you been working at the Camarillo State Hospital for some time?
A. Ten years.
Q. Two years?
A. Ten.
Q. Ten years. Are you acquainted with Dr. May at the hospital?
A. I know him.
Q. Do you know Dr. Nash?
A. Yes.
Q. Are you acquainted with him?
A. Yes. Not personally.
Q. You have heard of him?

(Prospective Juror nods head affirmatively.)

Q. They are doctors that are on the staff at that hospital, are they not?
A. Yes, sir.
Q. Mrs. Knutson, you understand from what you have [fol. 459] heard in the courtroom the last few days that Mrs. Duncan is charged in this indictment returned by the Grand Jury with the offense of murder, do you not?
A. Yes, sir.
Q. And you further understand, do you not, that the alleged victim of that alleged murder is one Olga Duncan?
A. Yes, sir.
Q. Now, if the evidence in this case should disclose that Olga Duncan was the daughter-in-law of Elizabeth Duncan, the defendant in this case, would that cause you to entertain any bias or prejudice against Mrs. Duncan?
A. No, sir.

Q. If the evidence in this case should disclose that Olga Duncan at the time that she came to her death was then pregnant, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. Have you or has any member of your family or anyone near and dear to you ever been the victim of a crime of assault or passion?

A. No, sir.

Q. Or ever had occasion to testify against any person charged with a similar offense?

A. No, sir.

Q. Have you ever been or has any member of your family or anyone near and dear to you connected in any manner with any law enforcement agency?

[fol. 460] A. No, sir.

Q. Are you acquainted with Mr. Roy Gustafson, the District Attorney of this County?

A. No, sir.

Q. Are you acquainted with any of the deputies in his office or any of the members of his staff, insofar as you know?

A. No, sir.

Q. It might be possible that certain law enforcement officers may testify as witnesses in this case. If that should occur, would you be apt to give any greater credence to the testimony of a law enforcement officer merely because he happens to be a law enforcement officer than you would that of any other witness?

A. No, sir.

Q. You feel that you could weigh and consider the testimony of such a witness by the same standards as you would that of any other witness?

A. Yes, sir.

Q. You understand from what you have already heard that the law presumes Mrs. Duncan to be innocent of the charge contained in this indictment?

A. Yes, sir.

Q. If you are accepted as a juror in this case, do you feel that you could give to her the benefit of that presump-

[fol. 461] tion of the law?

A. Yes, sir.

Q. And if you are accepted as a juror in this case, would you require the prosecution to prove to your satisfaction, to a moral certainty and beyond a reasonable doubt her guilt of the charge contained in this indictment?

A. Yes, sir.

Q. If after a full and fair consideration of all the evidence and a consideration of the instructions as will be given to you by His Honor, and a full and a fair discussion of the evidence in the light of those instructions among your fellow jurors, you, yourself, honestly and conscientiously entertain a reasonable doubt as to the guilt of Mrs. Duncan, would you hesitate to resolve that doubt in her favor and vote for a verdict of not guilty?

A. Yes, sir.

Q. That is what you would do?

(Prospective Juror nods head affirmatively.)

Q. I want to direct your attention to certain names and ask you if you recognize any of these names as persons with whom you might be acquainted or whom you know. Clarence R. Henderson.

A. No, sir.

Q. D. Gordon Johnston?

A. No, sir.

Q. Virgil L. Payton?

[fol. 462] A. No, sir.

Q. Doreen Corraini?

A. No.

Q. Sylvia Butler?

A. No.

Q. Hal V. Hammons, Jr.?

A. No.

Q. Emma Short?

A. No.

Q. Barbara Reed?

A. No.

Q. Diane Romero?

A. No.

Q. Rudolph Molino Romero?

A. No.

Q. Mary Ann Dowhower?

A. No, sir.

Q. Dorothy Barnett?

A. No, sir.

Q. I think that you probably also understand from some questions that I asked either yesterday or the day before that my practice of law is, generally speaking, confined to the County of Los Angeles. In other words, let's say that I am a stranger in Ventura County. You wouldn't hold that against my client because I came up here and undertook to defend her in this case, would you?

[fol. 463] A. No, sir.

Q. You feel that you could accord to her just as fair a trial as through, let's say, she were being represented by one of your local attorneys who practices law in Ventura County here?

A. Yes, sir.

Q. Do you subscribe to any of the local papers?

A. Yes, sir.

Q. Do you sometimes have occasion to listen to news-broadcasts on the radio?

A. No, sir.

Q. Do you ever listen to any news broadcasts on television?

A. Yes, sir.

Q. Have you been subscribing to the local papers for some time past?

A. Yes, sir, several years.

Q. Do you recall whether or not you have in the past read anything about this case, Mrs. Knutson?

A. Yes, I have read it.

Q. And in addition to what you read about it, did you discuss it with any person?

A. Yes.

Q. Did you hear other people discuss it?

A. Yes.

Q. And were those people with whom you discussed it [fol. 464] friends and acquaintances of yours?

A. Yes, sir.

Q. Did you discuss it with quite a few people?

A. Just a few.

Q. Just a few. Were they people in whom you had confidence?

A. Well, yes.

Q. And they likewise discussed this particular case with you?

A. Yes, sir.

Q. And did you believe discussing the case with them that what they told you was the truth?

A. Yes.

Q. You had no reason whatsoever to disbelieve them?

A. No, sir.

Q. Well, as a result of what you read about this case and the discussion which you had with other persons, and those other people having discussed it with you, did you, yourself, form any opinion with respect to the guilt or innocence of Mrs. Duncan?

A. Yes.

[fol. 465] Q. And the opinion which you formed, was that an opinion that was adverse to Mrs. Duncan?

A. Yes.

Q. And as you sit in the jury box this afternoon, do you still have that same opinion?

A. Yes.

Q. And the opinion which you hold as of now, is one that is adverse to Elizabeth, is that correct?

A. Yes.

Q. And is that opinion such that would require some evidence on the part of the defense for you to overcome?

A. Yes.

Q. In other words, you feel that in order that you might overcome that opinion, that we of the defense would have to produce some evidence here in court to cause you to overcome it, is that right?

A. Yes.

Q. Is that opinion which you now have, one that would require, let's evidence of a less positive nature to produce a conviction in your mind, than would be necessary if you had never heard about this case?

A. Well, probably so.

The Court: Do you understand that question?

The Prospective Juror: I'm not sure.

The Court: What?

The Prospective Juror: I'm not sure that I did.

[fol. 466] The Court: I didn't think so. You better repeat it.

Mr. Sullivan: All right.

Q. The prosecution in this case is required to prove to your satisfaction, to a moral certainty, beyond a reasonable doubt, the guilt of Mrs. Duncan of the offense of murder as charged in this indictment. You understand that, do you not?

A. Yes.

Q. And you now hold some opinion in your own mind that is adverse to Mrs. Duncan? That is right?

A. Yes.

Q. In other words, the opinion which you now hold you believe Mrs. Duncan to be guilty of this offense, don't you?

A. Yes.

Q. And if you are accepted as a juror in this case, you feel that in arriving at a verdict, that the opinion that you now hold would influence your verdict to some extent?

A. No.

Q. What?

A. No.

Q. You mean that you can set that opinion completely aside?

A. Yes, I do.

Q. It wouldn't affect you one way or the other in arriving [fol. 467] at a verdict in this case?

A. No, sir.

Q. But you would nevertheless require the prosecution to produce some evidence to overcome that opinion—I mean the defense?

A. Yes.

The Court: Well, Mrs. Knutson, is it?

The Prospective Juror: Yes.

The Court: You say that you would require the defense to produce some evidence. If I instruct you that under the law the District Attorney must prove the defendant beyond a reasonable doubt and to a moral certainty before you could convict her, you would follow that instruction, wouldn't you?

The Prospective Juror: Yes.

The Court: The defense of they're not required to prove anything. You understand?

The Prospective Juror: Yes.

The Court: And if I instruct you that way, you won't require them to prove anything, will you?

The Prospective Juror: No, sir.

The Court: All right.

Mr. Sullivan:

Q. But would you have to have some evidence on the part of the defense in order to lay aside your present opinion regarding Mrs. Duncan's guilt?

Mr. Gustafson: I'm going to object to that, Your Honor, [fol. 468] on the ground that it is incompetent——

The Court: The objection is sustained. She has already said under my instruction that she would not require the defense to educe any evidence. That is right, isn't it?

The Prospective Juror: Yes, sir.

Mr. Sullivan:

Q. Well, do you think that you can act just as fairly and impartially as a trial juror in this case as if you had never heard about it?

A. Yes, sir.

Q. And never had formed any opinion about it?

A. Yes, sir.

Q. Do you have children of your own?

A. Yes, sir.

Q. Grown children?

A. Yes, sir.

Q. Do you have a daughter, a grown daughter?

A. Yes, sir.

Q. Well, let's assume that your daughter were on trial here today, charged with the identical offense that is charged in this indictment against Mrs. Duncan, that she was sitting at the counsel table here instead of Mrs. Duncan, and you wanted her to be tried by a jury of 12 men and women who were absolutely unbiased and unprejudiced and who would render a fair and impartial verdict. Do you feel that you could trust the fate of your daughter to the hands of 12 people of your present frame of mind?

[fol. 469] A. Yes, sir.

Q. You feel that if you did that, that she would receive absolutely a fair and impartial trial?

A. Yes, sir.

Q. Do you know of any reason whatsoever why you cannot give Mrs. Duncan a fair and impartial trial?

A. No, sir.

Mr. Sullivan: Well, I am going to challenge this juror for cause, Your Honor.

The Court: The challenge is disallowed. Go ahead.

Mr. Gustafson:

Q. Is it Mrs. Knutson or Knudson?

A. Knutson.

Q. All right, Mrs. Knutson, when Mr. Sullivan asked you about the person with whom you may have discussed this case, you said that you had discussed the matter with a few persons. Those persons didn't indicate to you or say to you that they knew anything about it other than what they read in the newspapers, did they?

A. No.

Q. I take it that you don't know Mr. Sullivan or Mr. Frank Duncan or Mrs. Elizabeth Duncan?

A. No, sir.

Q. Mr. Sullivan mentioned the fact that he did most of his practicing in Los Angeles, and you said that you wouldn't have any bias or prejudice against his client by [fol. 470] reason of that fact. Would you similarly say that you would not have any favoritism toward his client because he is a famous Los Angeles lawyer?

A. No, sir, I would not.

Q. You would decide the case not on the basis of the skill of the attorneys but on the basis of the evidence that was produced here in court, would you not?

A. Yes, sir.

Q. You would listen to Judge Blackstock if he tells you that what we attorneys say is not evidence, but the evidence is what you hear from the witness stand?

A. Yes.

Q. Isn't that true?

A. Yes, sir.

Q. And so far as the law is concerned, you would listen to what Judge Blackstock says is the law?

A. Yes, sir.

Q. All right. Now, it has been indicated to you that before you can vote for a verdict which would say guilty of murder, it would be necessary that you be convinced of the evidence produced here, beyond a reasonable doubt, of the truth of the charge against the defendant. You would follow that instruction, would you not?

A. Yes, I would.

Q. And you would not require that I prove the guilt of the defendant by more evidence than that, would you?

[fol. 471] A. No, sir.

Q. In other words, you wouldn't sit there and say, "Well, I wouldn't vote guilty, regardless of what Judge Blackstock says, unless it is proved beyond any doubt whatever that she is guilty"?

A. No, sir.

Q. Mrs. Knutson, if you were to serve as a juror in this case and in the course of the case there were certain items of evidence perhaps or other things that caused you to become very sympathetic with Mrs. Duncan, would you be able to follow Judge Blackstock's instruction that you are not to decide whether she is guilty or innocent on the basis of your sympathies but you are to put your sympathies aside and decide it on the basis of the evidence? Would you do that?

A. Yes.

Q. Do you think that you could do that?

A. Yes.

Q. Now, do you have any conscientious opinion regarding the death penalty that would keep you from voting for a verdict of murder in the first degree which carries with it as one of its only two possible penalties the death penalty?

A. Yes, sir, I would.

Mr. Gustafson: You do. I challenge the juror for cause.

Mr. Sullivan: We are going to object to the challenge [fol. 472] for cause on the grounds that the only thing that this jury has to decide is the guilt or innocence of Mrs. Duncan.

The Court: The challenge is allowed.

Mr. Gustafson: You are excused.

(The prospective juror was excused.)

The Clerk: Robert E. Hill—H-i-l-l.
The Court: Where do you live, Mr. Hill?
The Prospective Juror: Ventura.
The Court: How long have you lived here?
The Prospective Juror: Five years.
The Court: Did you ever serve on a jury?
The Prospective Juror: No, Sir.
The Court: What?
The Prospective Juror: No, sir.
The Court: Not in any kind of a case?
The Prospective Juror: No.
The Court: You have been here for some time so that you know what this case is all about?
The Prospective Juror: Yes, sir.
The Court: Is there any reason why you couldn't be absolutely fair and impartial if you should serve on this jury?
The Prospective Juror: No, sir.
The Court: You may inquire.
Mr. Sullivan: Thank you, Your Honor.

Q. Mr. Hill, may I inquire as to your business or occupa- [fol. 473] tion, please?
A. Market manager.
Q. Market manager?
A. Yes.
Q. And are you married, Mr. Hill?
A. Yes, sir.
Q. Do you have children?
A. Yes, I have.
Q. Mr. Hill, you understand the nature of the charge contained in this indictment, do you not?
A. Yes.
Q. And you are aware of the fact that this indictment alleges that the victim of this alleged murder was one Olga Duncan?
A. Yes, sir.
Q. Is there anything about the nature of the charge itself that would cause you to entertain any bias or prejudice against Mrs. Duncan?
A. No, sir.
Q. If the evidence in this case should disclose that Olga Duncan was the daughter-in-law of my client, Elizabeth

Duncan, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. If the evidence in this case should disclose that Olga Duncan at the time she came to her death was then preg-
[fol. 474] nant, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

[fol. 475] Q. Have you or has any relative of yours or anyone near and dear to you ever been the victim of a crime of violence or passion?

A. No.

Q. Or ever had occasion to be a witness against any person charged with such a crime?

A. No.

Q. Are you acquainted with Mr. Roy Gustafson, the District Attorney of this County?

A. No.

Q. Are you acquainted with any of the deputies in his office or members on his staff?

A. I have a speaking acquaintance.

Q. You have a speaking acquaintance. Is that with some of his deputies?

A. Yes.

Q. Are those gentlemen customers of the market that you manage?

A. No.

Q. You just happen to have a speaking acquaintance with them?

A. Yes.

Q. Well, as a result of having a speaking acquaintance with some of the members of the District Attorney's staff, would that cause you to entertain any bias or prejudice against the defense in this case?

[fol. 476] A. No, sir.

Q. You feel that you could treat us just as fairly and impartially as though you didn't have this speaking acquaintance with these gentlemen?

A. Yes, sir.

Q. Have you ever been or has any relative of yours or anyone near and dear to you connected with any law enforcement agency?

A. Yes, sir.

Q. And is that a near relative or is it yourself?

A. No.

Q. Yourself?

A. No, sir.

Q. Oh. A relative.

A. Yes.

Q. Is that a near relative?

A. Brother-in-law.

Q. Your brother-in-law. And may I inquire as to what capacity he is engaged in law enforcement activities?

A. Police officer.

Q. Here in Ventura County?

A. No.

The Court: What was that?

The Prospective Juror: Police officer.

The Court: Did he say in what capacity?

The Prospective Juror: Police officer.

[fol. 477] The Court: Police officer.

Mr. Sullivan:

Q. Is that in Ventura County?

A. No, sir.

Q. In California some place?

A. No.

Q. Outside the State?

A. Yes.

Q. Well, it might be that certain witnesses may be called in this case who are law enforcement officers. Would the fact that you have a brother-in-law who is a police officer, would that fact alone cause you to give any greater credence to the testimony of a law enforcement officer than you would that of any other witness?

A. No, sir.

Q. Would you be apt to give any greater credence to the testimony of a law enforcement officer merely because he happens to be a law enforcement officer than you would that of any other witness?

A. No, sir.

Q. You feel that you could weigh and consider the testimony of such a witness by the same standards as you would that of any other witness?

A. Yes, sir.

Q. You realize from what you have heard in this courtroom that as Mrs. Duncan sits in the courtroom today the law presumes her to be innocent of the charge of murder contained in this indictment?

[fol. 478] A. Yes, sir.

Q. You feel that if you are accepted as a juror in this case that you could afford to her the benefit of that presumption of law?

A. Yes.

Q. Would you, if accepted as a juror in this case, require the District Attorney to prove to your satisfaction, to a moral certainty and beyond a reasonable doubt the guilt of Mrs. Duncan of the charge contained in this indictment?

A. Yes, sir.

Q. And if you were not convinced to a moral certainty and beyond a reasonable doubt of her guilt, would you hesitate under those circumstances to vote for a verdict of not guilty?

A. No, sir.

Q. You feel that you could still do that irrespective of how your fellow jurors might feel about the case?

A. Yes, sir.

Q. Now, do you subscribe to any of the local papers?

A. Yes, sir.

Q. And have you been a subscriber for some time past?

A. Yes, sir.

Q. Do you ever listen to the news casts on the radio?

A. No, sir.

Q. Do you ever listen to news broadcasts on television?

A. Yes, sir.

[fol. 479] Q. Have you read anything about this case?

A. Yes, sir.

Q. Did you read some articles about this case in the local paper?

A. Yes, sir.

Q. Did you read any articles about this case in any newspaper which purported to report the testimony of witnesses who appeared before the Grand Jury?

A. No.

Q. Did you read any articles in any newspaper which purportedly reported the confession of one Augustine Baldonado?

A. No.

Q. Did you read any articles in any newspaper which purportedly reported a confession of one Luis Moya?

A. No.

Q. Did you read any articles in any newspapers which purportedly reported statements concerning this case made by Mr. Roy Gustafson, the District Attorney?

A. No.

Q. Well, as a result of what you did read about the case, did you, yourself, form any opinion with respect to the guilt of Mrs. Duncan?

A. Yes.

Q. Just try, please, to keep your voice up because the Reporter must get your answers.

In addition to what you read did you discuss this case [fol. 480] with any person?

A. Yes.

Q. Was it discussed down at the market where you work then?

A. Well, it was.

Q. You discussed it with many people?

A. About four.

Q. Pardon?

A. About four.

Q. Those were people whom you trusted?

A. Yes.

Q. And they discussed the case with you also?

A. Yes.

Q. Did you believe that what was said by them concerning this case was true?

A. I believe they read it the same as I did.

Q. Did you believe that what they said concerning it was true?

A. When you read a newspaper, you have to read between the lines.

Q. I am speaking——

A. A certain part of it, yes.

Q. Mr. Hill, I am speaking about what people said to you about it. Did you believe that what they said to you was true?

A. A part of it.

[fol. 481] Q. Do you have any reason to disbelieve them?

A. Only my own.

Q. What?

A. Only my own.

Q. Did you disbelieve them?

A. Part of it.

Q. Part of it. Part of what they said you believed to be true and part you didn't believe to be true?

A. That's right.

Q. Well, do you know whether or not these people who discussed this case with you had and personal knowledge about the matters that they discussed with you?

A. No, I don't.

Q. You don't know?

A. No.

Q. Do you know whether or not any of those persons who discussed this case with you might be witnesses in this case?

A. No, I do not.

Q. This opinion which you formed, was it in respect to the guilt or innocence of Mrs. Duncan?

A. Yes, it was.

Q. And was that opinion which you formed one that is adverse to Mrs. Duncan?

A. Yes.

Q. Was your opinion that you formed one in which you [fol. 482] believed Mrs. Duncan to be *guilt* of this charge?

A. Yes.

Q. Do you still entertain that opinion?

A. No.

Q. Did something occur that caused you to change your opinion or to disregard your opinion, let's say?

A. I just completely put it out of my mind. I had no interest in it one way or the other, until I came here.

Q. What?

A. I had no interest in it one way or the other until I came up here.

Q. No, but you did indicate to me that you did form an opinion?

A. I did at the time, yes.

Q. But you no longer entertain that opinion?

A. No, I don't.

Q. Did anything occur that caused you to no longer entertain that opinion?

A. Talk.

Q. What?
A. Talk.
Q. With other people?
A. Yes.
Q. When was that?
A. Well, I don't know. Sometime ago.
Q. What?
[fol. 483] A. Sometime ago. I don't know just when.
Q. So because of what somebody else later said to you it changed your opinion?
A. I just dropped everything. It just left my mind entirely. I had no talks with anyone——
Q. So now as you sit in the jury box today, if I understand you, you don't have any opinion?
A. No.
Q. You don't have an opinion as you sit here today that Mrs. Duncan is guilty, do you?
A. No.
Q. You have no opinion regarding either her guilt or innocence; is that it?
A. No.
Q. Well, if you are accepted as a juror in this case, would this opinion respecting Mrs. Duncan's guilt which you did at one time form in your own mind influence your verdict one way or the other?
A. No, sir.
Q. Do you think that you can decide this case solely and exclusively from the evidence that you hear as you hear it in this courtroom?
A. Yes.
Q. Uninfluenced by the opinion which you formed in the past?
A. Yes, sir.
[fol. 484] Q. Let's assume that your wife, Mrs. Hill, was seated in this chair that is now occupied by Elizabeth Duncan and your wife was charged in this indictment with the murder that is now charged against Elizabeth Duncan. She was on trial here today and her counsel was trying to select a fair and impartial jury to hear her case and to decide her guilt or innocence, and all you wanted your wife to have was a jury of 12 men and women absolutely unbiased and unprejudiced whom you wanted to return a fair and impar-

tial verdict. Would you be willing to place her fate in the hands of 12 men and women of your present frame of mind?

A. Yes, sir.

Q. And regardless of what verdict that jury brought in, would you feel that it was the fair expression of opinion based upon the evidence arrived at by those men and women?

A. Yes, sir.

Q. You would feel that they would arrive at that opinion uninfluenced by any opinion they might have formed in the past?

A. Yes.

Q. Do you know of any reason, regardless of what it might be, that you could not give to Mrs. Duncan a fair and impartial trial?

A. No.

Mr. Sullivan: Pass for cause.

Mr. Gustafson:

Q. Mr. Hill, the persons with whom you spoke about this [fol. 485] case, they didn't say to you or indicate in any other manner that they personally knew the facts of the case?

A. No.

Q. So far as you were concerned, the impression you got from them was that they only knew what they read in the papers or heard on the radio?

A. That's right.

Mr. Sullivan: I am going to object to that question as calling for a conclusion on his part.

Mr. Gustafson: I am asking so far as he was concerned.

Mr. Sullivan: I know.

Mr. Gustafson: He is the only one that knows what his impression is.

The Court: Mr. Reporter, read that question.

(Question read.)

The Court: Is that the question you are objecting to?

Mr. Sullivan: That was the question.

The Court: The objection is overruled.

Mr. Gustafson:

Q. How about this, Mr. Hill, do you have any conscientious objection to the death penalty which would preclude you from voting for a verdict of guilty of an offense, one of the punishments for which is the death penalty?

A. Yes, sir, I have.

Q. You have an objection?

A. Yes.

[fol. 486] Q. Against the death penalty? You could not vote for a verdict which has as one of the alternatives the death penalty?

A. That's right.

Mr. Gustafson: I challenge for cause.

Mr. Sullivan: We will object to the challenge. We feel that the juror is not disqualified in view of the fact that this jury is to determine only the question or the issue of guilt or innocence of Mrs. Duncan.

The Court: The challenge is allowed. Call another name.

The Clerk: Mrs. Lydia Gisler, G-i-s-l-e-r.

The Court: Mrs. Gisler, you live at Oxnard?

The Prospective Juror: Yes, I do.

The Court: You have been here in attendance on the Court long enough so that you know what the case is all about?

The Prospective Juror: Yes, sir.

The Court: If you should serve on this jury, could you be entirely fair and impartial to this defendant?

The Prospective Juror: I am afraid not.

The Court: What?

The Prospective Juror: I am afraid not.

The Court: Well, you may inquire.

[fol. 487] Mr. Sullivan:

Q. Mrs.—is pronounced Gisler?

A. Gisler.

Q. Gisler?

A. Gisler.

Q. Thank you. Mrs.?

A. Miss.

Q. Miss. I'm sorry. Miss Gisler, may I inquire as to your business or occupation?

A. I am employed as a saleslady at Lehmann's in Oxnard.

Q. Saleslady. Do you understand, Mrs. Gisler, from what you have already heard, that this indictment charges Mrs. Duncan with the murder of one Olga Duncan, do you not?

A. I do.

Q. If the evidence in this case should disclose that Olga Duncan was the niece of Mrs.—I mean the daughter-in-law of Mrs. Duncan, would that cause you to entertain any bias or prejudice against her?

A. No.

Q. If the evidence should disclose that Olga Duncan at the time she came to her death was then pregnant, would that cause you to entertain any bias or prejudice against Mrs. Elizabeth Duncan?

A. No.

Q. Have you or has any relative of yours or anyone near [fol. 488] and dear to you ever been the victim of a crime of assault or violence?

A. No, sir.

Q. Or ever had occasion to be a witness against any person charged with such a crime?

A. No.

Q. Is any relative of yours or anyone dear to you connected in any manner with any law enforcement agency?

A. No.

Q. It might be that certain law enforcement officers might testify in the case. If they should do so, would you be apt to give any greater credence to their testimony merely because they happened to be law enforcement officers?

A. No, sir.

Q. You feel that you could weigh and consider the testimony of such a witness by the same standards as you would that of any other witness that might be called?

A. I think so.

Q. Well, let's assume that Mrs. Duncan should take the witness stand and testify in her own defense. Would you be apt to deny her the benefit of her own testimony merely because she happens to be the defendant in this case?

A. I don't think so.

Q. You think that you could accord to her the benefit of her own testimony, is that it?

[fol. 489] A. Yes.

Q. You understand from what you have heard, that as she sits in the courtroom today, the law presumes that she is innocent of this charge of murder, do you not?

A. Yes.

Q. If you are accepted as a juror in this case, could you give her the benefit of that presumption of the law?

A. I really don't know.

Q. You don't know whether you could or not. I rather surmise from your answer, that perhaps you have formed some opinion in your own mind regarding the guilt or innocence of Mrs. Duncan. Is that right?

A. That is right.

Q. And I take it from your answers, that the opinion which you have formed in your own mind is adverse to Mrs. Duncan, is that correct?

A. Yes, sir.

Q. In other words, you have an opinion that Mrs. Duncan is guilty of the offense charged in this indictment, is that it?

A. Yes.

Q. And you entertain that opinion as you sit in the jury box this morning, is that correct?

A. Yes.

Q. And the opinion which you now entertain with respect [fol. 490] to her guilt, would that opinion require some evidence on the part of the defense in this case to overcome?

A. It certainly would.

Q. In other words, we would come before you with somewhat of a handicap, is that it?

A. I'm afraid so.

Q. And we would have to produce some evidence on behalf of Mrs. Duncan that would change your present opinion, is that right?

A. Yes, sir.

Q. And that would be true regardless of what the law might be applicable to this case, is that right?

A. I guess so.

Q. It is a pretty fixed opinion in your own mind, is that right?

A. I'm afraid so.

Q. And you feel that that opinion is one which would prevent you from rendering an impartial verdict in this matter?

A. I'm afraid so.

Q. Let's say that you or someone near and dear to you were on trial here today for the identical offense in place of Mrs. Duncan, would you want to place your fate or her fate in the hands of 12 men and women of your present frame of mind? Do you understand that?

[fol. 491] A. Yes.

Q. Would you want to do it?

A. Well, I might try.

Q. Well, would you want to?

A. I don't know.

Q. It would be pretty hard to do?

A. Yes.

Q. Then it would be pretty hard for them to get a fair and impartial trial, is that right?

A. I'm afraid so.

Mr. Sullivan: I'm going to challenge the juror for cause, Your Honor.

Mr. Gustafson: I would like to examine this juror, Your Honor.

Q. Mrs. Gisler, assuming that you have formed an opinion that Mrs. Duncan is guilty as charged. Would you not listen to Judge Blackstock if he told you that, notwithstanding, whatever your opinion might be, that in voting for a verdict, you could only base a verdict on the evidence that you heard in this case, could you do that?

A. I would try.

Q. Do you think that you could? In other words, do you think that you could do this, that if Judge Blackstock tells you that you must base your verdict—we are making a distinction between this opinion that you come into the courtroom with and that you sit here with today, and the [fol. 492] weight of guilty or not guilty that comes at the end of the trial of this case. Now, suppose that you do hear evidence in this case and suppose that from that evidence you are not convinced beyond reasonable doubt that Mrs. Duncan is guilty and suppose further that the judge tells you that if that is the state of your mind, that if you haven't been convinced by the evidence beyond a reasonable doubt as to her guilt, then you are to vote that she is not guilty, would you do that, or would you say, "Well, because I had an opinion before, from what I read in the papers, I am go-

ing to vote her guilty anyway, regardless of what the judge says"?

A. No. I would try and be fair about that.

Q. You would try and be fair. Now, what I would like to know now, Mrs. Gisler, is whether you think that you could base your verdict, whichever way it was, guilty or not guilty, do you think that you could base your verdict on the evidence and the evidence alone?

A. I think maybe I could.

Q. You think that you could. And would you try to do that?

A. Yes, sir.

Q. So that you could and you would base your verdict on the evidence in the case. And now if the judge tells you that despite what your opinion is, the fact is that it is my burden as prosecutor to prove Mrs. Duncan guilty beyond a reason-
[fol. 493] able doubt, you would require that I do so, before you voted for a verdict of guilty, wouldn't you?

A. Yes.

Q. And if the judge tells you that Mrs. Duncan is presumed to be innocent under our system of law and she doesn't have to prove that she is not guilty, you would follow that, would you not?

A. Yes.

Q. So that again, despite the opinion that you may have as you sit in the box here now, you would not let that opinion influence your verdict in this case, would you?

A. No, I don't think so.

Q. And is it fair then to say, Mrs. Gisler, that notwithstanding the opinion that you now have, you could following the instructions of the court, fairly and impartially try the matter that would be submitted to you as a juror? Isn't that right?

A. I think so.

Q. You think that you could?

A. I think so.

Q. Fairly and impartially try the case?

A. (The prospective juror nodded affirmatively.)

Q. Now, would you? You could, you say.

A. I will try.

Q. And you would?

[fol. 494] A. (Witness nods head affirmatively.)

The Court: What was that last statement? You will try? You said, "I will try." As a matter of fact, you would, wouldn't you?

The Prospective Juror: I think so.

The Court: Well, Mrs. Gisler, you understand that the defendant here is a woman charged with a very serious offense and it could be either one of the two penalties, either life imprisonment or the death penalty, a very serious offense.

The Prospective Juror: Judge Blackstock, I don't believe in capital punishment.

The Court: You understand that, of course.

Mr. Gustafson: She has now said that she doesn't believe in capital punishment.

The Court: Is there a challenge on that ground?

Mr. Gustafson: Yes, Your Honor.

Mr. Sullivan: Well, I object on the grounds that this jury is not called upon to decide that issue.

The Court: You are excused. That is all.

(The prospective juror was excused.)

The Clerk: Donald—"D"—Bourne—B-o-u-r-n-e.

The Court: You have been here in the courtroom all week, haven't you?

The Prospective Juror: I have.

The Court: You have heard everything that has been [fol. 495] said here?

The Prospective Juror: I have.

The Court: And you know what the case is all about?

The Prospective Juror: I do.

The Court: Is there any reason why you couldn't be absolutely fair and impartial if you should be accepted as a juror in this case?

The Prospective Juror: There is.

The Court: The[illegible]s? Well, you may inquire.

Mr. Sullivan:

Q. Mr. Bourne, may I inquire as to your business or occupation?

A. I'm a construction worker.

Q. Are you married, Mr. Bourne?

A. Yes, I am.

Q. And do you have children?

A. Yes.

Q. You understand from what you have heard so far in the courtroom, that Mrs. Duncan is charged in this indictment with the murder of one Olga Duncan?

A. Yes.

Q. And if the evidence in this case should disclose that Olga Duncan is the daughter-in-law of Elizabeth Duncan, would that fact cause you to entertain any bias or prejudice against Elizabeth Duncan?

A. No.

Q. If the evidence should disclose that Olga Duncan at [fol. 496] the time she came to her death was then pregnant, would that then cause you to entertain any bias or prejudice against Elizabeth Duncan?

A. No.

Q. Have you ever been or is any relative of yours or anyone near and dear to you connected in any manner with any law enforcement agency?

A. No.

Q. In the event some law enforcement officer should testify as a witness in this case, would you be apt to give any greater credence to the testimony of such a witness merely because he happened to be a law enforcement officer?

A. No.

Q. You understand that as Mrs. Duncan sits in the courtroom today, the law clothes her with the presumption of innocence?

A. Yes.

Q. And that presumption goes with her throughout this trial?

A. Yes.

Q. If you are accepted as a juror in this case, do you think that you could accord to her the benefit of that presumption of the law?

A. Well, would you say that again, please?

Q. If you are accepted as a juror in this case, could you [fol. 497] give to Mrs. Duncan the benefit of the law which says that she is presumed to be innocent of this charge?

A. I am afraid I could not.

Q. You couldn't do that?

A. No.

Q. I take it from your answer, that you say that you could not because you yourself have formed some opinion with respect to her guilt or innocence, is that correct?

A. That is correct.

Q. And I take it that the opinion which you have formed is one that is adverse to Elizabeth Duncan, is that correct?

A. That is correct.

Q. In other words, you have formed an opinion that Mrs. Duncan is guilty of this charge of murder, is that correct?

A. That's correct, sir.

Q. Is that an opinion which you formed as a result of something that you read in the newspapers concerning this case?

A. It is.

Q. In addition to what you read in the newspapers, did you discuss the case with other people?

A. I have.

Q. With many people, I take it?

[fol. 498] A. Ten or 12.

Q. These people that you discussed it with, they also talked about this particular case with you also, did they not?

A. They did.

Q. In other words, it was talked back and forth among you and other people at various times, I take it, is that right?

A. That is right.

Q. Did you believe that what these people said to you concerning this case was the truth?

A. I didn't have any reason to disbelieve it.

Q. You didn't have any reason to disbelieve it. They weren't people that you would ordinarily disbelieve, is that right?

A. That is right.

Q. Well, this opinion that you formed, I take it that you still have that same opinion, is that correct?

A. I do.

Q. And you have that opinion as you sit in the jury box this afternoon, is that correct?

A. I do.

Q. And is that opinion such that it would require some evidence on the part of the defense to overcome?

A. A considerable amount.

Q. A considerable amount?

[fol. 499] A. Yes.

Q. And is that opinion such that it is likely to influence your verdict if you are accepted as a juror in this case?

A. Yes.

Q. It is an opinion that you believe would prevent you from action fairly and impartially?

A. That is correct.

Q. Is that right?

A. That's correct.

Mr. Sullivan: I'm going to challenge the juror for cause, Your Honor.

Mr. Gustafson:

Q. Mr. Bourne, you heard the questions that have been asked previously of jurors who have indicated a similar response?

A. Yes.

Q. Have you understood that type of question that I have asked of the jurors?

A. I have.

Q. So that then am I stating it correctly to say that even though the judge would tell you that you must decide the case, the verdict in this case, solely upon the basis of the evidence presented to you, you would be unable, because of the opinion that you now hold, to do that?

A. I'm afraid that is correct, yes.

The Court: What is the answer?

[fol. 500] Mr. Gustafson: He is afraid that is correct. I don't oppose the challenge for cause.

The Court: All right, you are excused.

(The prospective juror was excused.)

The Court: The challenge is allowed. Call another name.

The Clerk: Robert—initial "H"—Zuhlke,—Z-u-h-l-k-e.

The Court: How do you pronounce your name?

The Prospective Juror: Zuhlke.

The Court: Where do you live. Mr. Zuhlke?

The Prospective Juror: Oxnard.

The Court: How long have you lived there?

The Prospective Juror: Twenty years.

The Court: Did you ever serve on a jury in a criminal case?

The Prospective Juror: No, sir.

The Court: You have been here in the courtroom for all week, haven't you?

The Prospective Juror: Yes, sir.

The Court: And you have heard everything that has been said?

The Prospective Juror: Yes, sir.

The Court: So you know what the case is all about?

The Prospective Juror: Yes, sir.

The Court: If you should be selected as a juror in this [fol. 501] case, could you be absolutely fair and impartial to this defendant?

The Prospective Juror: Yes, sir.

The Court: To both sides? You could be fair to both sides?

The Prospective Juror: Yes, sir.

The Court: All right. You may inquire.

Mr. Sullivan: Thank you.

Q. Mr. Zuhlke, may I inquire as to your business or occupation, please?

A. I am a carpet layer and linoleum.

Q. Carpet layer?

A. Yes.

Q. Are you married, Mr. Zuhlke?

A. Yes.

Q. Do you have children?

A. Yes.

Q. How long have you resided in Oxnard?

A. Twenty years.

Q. Well, Mr. Zuhlke, do you understand what you have heard in the last two and a half days or going on three days, that Mrs. Duncan is charged in this indictment with the murder of one Olga Duncan, do you not?

A. Yes.

Q. If the evidence in this case should disclose that Olga Duncan was the daughter-in-law of Elizabeth Duncan, [fol. 502] would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. If the evidence in this case should disclose that Olga Duncan at the time she came to her death was then pregnant, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. Have you or has any member of your family or anyone near and dear to you ever been the victims of a crime or assault or passion?

A. No, sir.

Q. Or ever had occasion to be a witness against a person charged with such a crime?

A. No.

Q. Are you personally acquainted with Mr. Roy Gustafson, the District Attorney in this county?

A. No, sir.

Q. Are you acquainted with any of the deputies in his office or members of his staff?

[fol. 503] Q. It might be that certain law enforcement officers may testify as witnesses in this case. If they should do so, would you be apt to give any greater credence to their testimony than you would that of any other witness merely because they happened to be law enforcement officers?

A. No, sir.

Q. Do you feel you could weigh and consider the testimony of such a witness by the same standards as you would that of any other witness that might be called?

A. Yes, sir.

Q. Is there any doubt in your mind about that?

A. Well, it all depends on the character of the person as a witness, I think.

Q. Let me ask you this: Do you have any preconceived notion that a law enforcement officer is more apt to tell the truth than some other witness?

A. No, sir.

Q. You understand from what you have heard that Mrs. Duncan as she sits in this courtroom today is presumed to be innocent of the charge of murder contained in this indictment, do you not?

A. Yes, sir.

Q. Now, if you are accepted on this jury, do you think you can accord to her the benefit of that presumption of law?

A. Yes, sir.

[fol. 504] Q. And from what you have already heard you realize that that presumption of innocence goes with her throughout this entire trial?

A. Yes, sir.

Q. If you are accepted as a juror in this case, would you require the prosecution to prove to your satisfaction to a moral certainty and beyond a reasonable doubt the guilt of Mrs. Duncan?

A. Yes, sir.

Q. Let's assume that you are accepted. You have heard the evidence in the case. You have received the instructions on the law from his Honor. You have retired to the jury room. You have fully and fairly discussed the evidence with your fellow jurors. You have endeavored, to the best of your ability, to weigh that evidence in the light of the instructions given to you by his Honor, and you say to yourself, "Well, I honestly and conscientiously entertain a reasonable doubt about the guilt of this lady." Would you under those circumstances hesitate to vote for a verdict of not guilty?

A. No, sir.

Q. You would continue to do so so long as you entertained that reasonable doubt in your own mind, would you?

A. Yes, sir.

Q. Would you be able to do that irrespective of how your fellow jurors might feel about the matter?

A. Yes, sir.

[fol. 505] Q. Do you subscribe to any of the local papers?

A. Yes, sir.

Q. And have you been a subscriber for some time past?

A. Yes.

Q. Do you sometimes listen to news broadcasts on the radio?

A. Yes, sir.

Q. And sometimes listen to television news broadcasts?

A. Yes, sir.

Q. Do you recall whether or not you have read anything about this case in the newspaper?

A. Yes.

Q. Did you read any articles in any newspaper which purported to report the testimony which was taken before the Grand Jury in this matter?

A. Yes, sir.

Q. Did you read any articles in any newspaper which purported to report a confession on the part of one Augustine Baldonado?

A. No, sir.

Q. Did you read any article in any newspaper which purportedly reported a confession by one Luis Moya?

A. Yes, sir.

Q. Did you hear any broadcasts on any radio which [fol. 506] purportedly reported a confession of one Luis Moya?

A. No, sir.

Q. Did you read any articles in any newspaper which purportedly reported any statements concerning this case made by Mr. Roy Gustafson, the district attorney of this county?

A. Yes, sir.

Q. As a result of what you read did you, yourself, form any opinion?

A. Yes, sir.

Q. Regarding the guilt or innocence of Mrs. Duncan?

A. Yes, sir.

Q. And that opinion which you formed, was that one which was adverse to Mrs. Duncan?

A. Yes, sir.

Q. In other words, you formed in your own mind an opinion she was guilty of this offense; is that it?

A. Yes, sir.

Q. In addition to what you read did you discuss this case with any person?

A. Three or four.

Q. Three or four people. And did they talk to you about it also?

A. Yes, sir.

Q. Did they make statements to you concerning the case?

A. Yes, sir.

[fol. 507] Q. And you don't know whether or not what those people said to you was something they knew of their own knowledge, do you?

A. I'm sure it wasn't.

Q. You are sure it wasn't?

A. It was just from the paper.

Q. What?

A. It was just from the paper, I am sure.

Q. As you sit in the jury box today do you still have that same opinion?

A. Yes, sir.

Q. And is that opinion such that it would require some evidence on the part of we of the defense to overcome your present opinion?

A. No, sir.

Q. What?

A. No, sir.

Q. We won't have any burden at all on our part to overcome that opinion; is that right?

A. No, sir.

Q. Is that opinion such that it is likely to influence you in your verdict in this matter?

A. No, sir.

Q. Do you think that you can lay that opinion completely aside and decide this case solely and exclusively from the evidence that you hear in this courtroom?

[fol. 508] A. Yes, sir. That's my duty.

Q. You don't feel that that opinion which you formed in the past and which you now have as you sit in the jury box would tend to influence your verdict one way or the other?

A. No, sir.

Q. Well, let's say that your wife was on trial here today in place of Mrs. Duncan, charged with this same offense. Her attorney was trying to select a jury of 12 men and women to try her case and you wanted her to have 12 people on that jury who were absolutely unbiased and unprejudiced in any matter whatsoever, people that you could feel would return an absolutely fair and impartial verdict. Would you want to trust the fate of your wife to 12 men and women of your present frame of mind?

A. Yes, sir.

Q. You feel that if you did so, you would be satisfied with whatever verdict they might return?

A. Yes, sir.

Q. Do you know of any reason why you cannot give to Mrs. Duncan a fair and impartial trial?

A. No, sir.

Mr. Sullivan: Pass for cause.

Mr. Gustafson:

Q. Do you entertain any conscientious opinion regarding the death penalty that would keep you from voting for a verdict of guilty of first degree murder one of the [fol. 509] alternative penalties for which is the death penalty?

A. No, sir.

Q. Do you entertain any conscientious opinion regarding the death penalty that would cause you to say that it should not be applied to any woman?

A. No, sir.

Q. Or do you entertain any such opinion that it should never be applied in that a case where the person is guilty of first degree murder, but actually didn't personally commit the killing?

A. No, sir.

Mr. Gustafson: Pass for cause.

The Court: All right, the peremptory is with the People.

Mr. Gustafson: I accept the jury as now constituted.

The Court: The peremptory is now with the defendant.

Mr. Sullivan: The defendant excuses Steven M. Flynn, juror number seven.

The Court: Call another name.

The Clerk: Horace D. Morgan, M-o-r-g-a-n.

The Court: Where do you live?

The Prospective Juror: Ventura.

The Court: How long have you lived in Ventura County, Mr. Morgan?

The Prospective Juror: 15 years.

[fol. 510] The Court: Have you ever served as a juror in a criminal case?

The Prospective Juror: No, sir.

The Court: You have been here long enough so that you know what this case is all about?

The Prospective Juror: Yes, sir.

The Court: Is there any reason why you cannot be fair and impartial to both sides if you should act as a juror in this case?

The Prospective Juror: No, sir.

The Court: You may inquire.

Mr. Sullivan: Thank you, your Honor.

Q. Mr. Morgan, may I inquire as to your business or occupation, please?

A. Custodian for Ventura Union High School District.

Q. All right. Are you married, Mr. Morgan?

A. Yes, sir.

Q. Do you have children?

A. Yes, sir.

Q. Grown children?

A. Yes, sir.

Q. You also understand from what you have heard in the courtroom that Mrs. Duncan is charged in this indictment with the murder of one Olga Duncan?

A. Yes, sir.

The Court: Mr. Sullivan. Mr. Sullivan, you are [fol. 511] standing a long ways off from the jury box. It is hardly fair to the jurors.

Mr. Sullivan:

Q. Is there anything about the nature of the charge which causes you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. If the evidence in this case should disclose that Olga Duncan was the daughter-in-law of Elizabeth Duncan, would that cause you to entertain any bias or prejudice against Elizabeth Duncan?

A. No, sir.

Q. If the evidence in this case should disclose that Olga Duncan at the time she came to her death was then pregnant, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. Have you or has any member of your family or anyone near and dear to you ever been the victim of a crime of assault or violence?

A. No, sir.

Q. Or ever had occasion to have been a witness against any person charged with such a crime?

A. No.

Q. Have you ever been connected with or has anyone near and dear to you, related to you, connected in any manner with any law enforcement agency?

[fol. 512] A. No, sir.

Q. Are you acquainted with Mr. Roy Gustafson, the district attorney of this county?

A. No, sir.

Q. Any members or deputies in his office or members of his staff?

A. No, sir.

Q. It might be that some law enforcement officers may testify in this case. If they should do so, would you be apt to give any greater credence to their testimony?

A. No, sir.

Q. Merely because they happened to be law enforcement officers?

A. No, sir.

Q. Do you feel that you could weigh and consider their testimony by the same standards as you would that of any other witness? Is that it?

A. Yes, I do.

Q. Well, suppose that Mrs. Duncan should take the witness stand and testify as a witness in her own behalf. Would you be apt to deny to her the benefit of her own testimony merely because she happens to be charged with this offense?

A. No, sir.

Q. You understand from what you have already heard that as she sits in court today the law clothes her with the [fol. 513] presumption of innocence?

A. I do.

Q. And you fur her understand from what you have already heard that that presumption of innocence goes with her throughout this entire trial?

A. Right.

Q. Do you feel that you could accord to her the benefit of that presumption of the law if you were to act as a juror in this case?

A. I do.

Q. Would you require the prosecution to prove to your satisfaction, to the moral certainty and beyond a reasonable doubt her guilt of the crime charged in this indictment?

A. I would.

Q. Do you feel that you can keep your mind open respecting her guilt or innocence until you have heard all of the evidence in this case?

A. I do.

Q. Not only that offered by the prosecution, but any testimony that is presented on behalf of Mrs. Duncan as well; is that right?

A. Yes.

Q. Let's say that you are acting as a juror. You have heard all of the evidence. The Court has instructed you as to the law applicable to this case. You have retired to the jury room. You have discussed the evidence fully and [fol. 514] fairly with your fellow jurors. You have endeavored conscientiously to weigh that evidence in the light of the law as given to you by the Court, and you say to yourself, "Well, I honestly and conscientiously entertain a reasonable doubt as to the doubt of Elizabeth Duncan." Under those circumstances would you hesitate to vote for a verdict of not guilty?

A. Yes, I would.

Q. Do you mean that you would hesitate to vote or would you vote a verdict of not guilty?

A. I would vote for a verdict of not guilty.

Q. I thought maybe you didn't mean to indicate what you said.

A. Right.

Q. Do you think you could do that irrespective of what your fellow jurors might feel about the evidence?

A. Yes.

Q. You have heard it indicated here that this case is likely to be a protracted one; in other words, it may run for several weeks, and if it should do so, and you sat through several weeks of trial, deliberated with your fellow jurors maybe for hours and hours and maybe you are the

only one voting one way and the other 11 are voting some other way. Would you surrender your well-founded opinion merely for the purpose of reaching a verdict and bringing this case to a close?

A. No, sir.

[fol. 515] Q. Now, do you subscribe to any of the local papers?

A. Yes, sir.

Q. And have you been a subscriber for some time past?

A. Several years.

Q. Several years. Do you ever listen to news broadcasts on the radio?

A. Yes, sir.

Q. On the local radio station?

A. Yes, sir.

Q. And do you ever listen to newscasts on television programs?

A. Yes, sir.

Q. Have you in the past read anything about this case?

A. Oh, yes.

Q. In addition to what you have read have you discussed this case with any persons?

A. Quite a few.

Q. Quite a few people. And these people talked about it to you also; is that right?

A. Yes.

Q. Now, these people that you talked to about it, said anything to you about it, did you believe that what they were telling you was the truth?

[fol. 516] A. I have no way of knowing. They were just like I was, probably, read it in the paper.

Q. You didn't disbelieve them?

A. No.

Q. You wouldn't know whether or not what they told you was something that they knew of their own personal knowledge or not, would you?

A. That's right.

Q. And you have no way of knowing from that they told whether or not any of those persons might be witnesses in this case?

A. I don't.

Q. Did you read any article or articles in any newspaper which purported to relate the testimony of witnesses who testified this case before the Grand Jury?

A. No.

Q. Did you read any article in any newspaper which purported to relate a confession on the part of one Augustine Baldonado?

A. Yes, sir, I did.

Q. And did you read any article in any newspaper which purportedly related a confession of one Luis Moya?

A. I think I did, yes.

Q. And did you hear any radio broadcast which purportedly related a confession of one Luis Moya?

A. No.

[fol. 517] Q. You didn't hear that. Well, from what you read concerning this case and from what you heard discussed concerning this case did you, yourself, form any opinion with respect to the guilt or innocence of Mrs. Duncan?

A. Yes, I did.

Q. Was that opinion which you formed one that was adverse to Mrs. Duncan?

A. Yes, sir.

Q. In other words, you, yourself, formed an opinion that she was guilty of this offense; is that right?

A. That's right.

Q. Now, in addition to having formed that opinion yourself did you express that opinion to any of these people that you talked to?

A. I don't recall.

Q. You don't recall whether you did or not?

A. No.

Q. You wouldn't say that you didn't?

A. No.

Q. Do you still entertain that same opinion as you sit in the jury box today?

A. Yes, sir.

Q. And is that opinion such that it would require some evidence on the part of we of the defense to overcome?

A. Yes.

Q. Is that opinion such that it is likely to influence [fol. 518] your verdict if you were called upon to act as a juror in this case?

A. I believe it would.

Q. Well, is that opinion such that you don't feel that you could act fairly and impartially? Is that it?

A. I do not.

Q. You don't believe you could?

A. No.

Mr. Sullivan: I challenge this juror for cause, your Honor.

Mr. Gustafson:

Q. Mr. Morgan, I believe Judge Blackstock asked you whether, if you were selected to serve as a juror, you could be fair and impartial, did he not?

A. Yes, sir.

Q. You said yes, you could be fair and impartial. Now you are saying you don't think you could be fair and impartial. Let me find out from you, from your answers whether you can be. Would you follow the instructions of law that Judge Blackstock gives you?

A. I would, yes.

Q. If Judge Blackstock tells you that regardless of the opinion that you have that Mrs. Duncan is guilty, that you are not to base your verdict on that opinion and you are not to base your verdict on anything you read in the newspapers or heard, but you are to base it solely on the evidence presented in the case, would you do so? Would [fol. 519] you follow that instruction of Judge Blackstock?

A. Yes, I would.

The Court: What is that answer?

Mr. Gustafson: "Yes."

The Court: Speak up, please.

Mr. Gustafson:

Q. Now, then, if the Judge had told you that despite any opinion you may have about Mrs. Duncan's guilt you can not vote for a verdict of guilty as a juror unless I produce evidence convincing you beyond a reasonable doubt that she is guilty, then would you follow that instruction?

A. Yes.

Q. So that if I didn't produce evidence in court here convincing you beyond a reasonable doubt that Mrs. Duncan

was guilty, you would vote not guilty even though your opinion from reading the newspapers was that she was guilty; is that correct?

A. That's right.

Q. Then you would not let the opinion that you formed from reading the newspapers influence your verdict, would you?

A. I think I am able to dismiss it.

Q. You are capable of dismissing that. Now, would you set that aside and not be governed by that insofar as the verdict is concerned, insofar as your voting on whether she is guilty or not guilty?

A. Yes.

Q. You would do that?

[fol. 520] A. Yes.

Q. In other words, then you would act fairly in this matter?

A. I'm sure I would.

Q. You wouldn't be unfair?

A. No.

Q. And would act impartially in the matter?

A. That's right.

Q. You wouldn't be partial against Mrs. Duncan or for my side; is that right?

A. No.

Q. So with that frame of mind, Mr. Morgan, then do you want to restate your position as to whether you think you could act as a fair and impartial juror in this case?

A. I would.

Q. What is your position? Could you act fairly and impartially?

A. Yes.

Q. And would you act fairly and impartially?

A. Yes.

Q. Notwithstanding the opinion you have with respect to Mrs. Duncan?

A. Yes.

Mr. Sullivan: Let me ask you this question: Let's assume that your wife or some one very near and dear to you were on trial here today for this identical offense in [fol. 521] place of Mrs. Duncan, and they were trying to secure a jury of people who were absolutely unbiased

and unprejudiced who would render a fair and impartial verdict in the matter. Would you want to trust their fate to 12 people of your present frame of mind?

A. No.

Q. You wouldn't feel that they could get a fair and impartial trial, would you?

A. No, I wouldn't.

Mr. Sullivan: I renew my challenge.

Mr. Gustafson: Mr. Morgan, I thought that you just told me that you thought you could act and would act fairly and impartially as a juror.

A. Yes, I did.

Q. And that you would set aside any opinion you have with respect to Mrs. Duncan's guilt and base your decision solely on the evidence presented in the case?

A. That's right.

Q. Well, now, if there was a jury composed of 12 persons who would set aside any opinions that they had formed from reading the newspapers or from talks with others, would set aside those opinions and who would decide the case before them solely on the basis of the evidence presented to them and the instructions given to them by the Judge, then what objection would you have to having your wife or yourself or anybody else tried by a jury like that?

[fol. 522] A. None at all.

Q. That is your frame of mind now, isn't it, that you will set aside your opinion and decide the case on the basis of the evidence?

A. Yes.

The Court: Are you through, Mr. District Attorney?

Mr. Gustafson: Yes, your Honor. I think the juror has indicated, that——

The Court: Mr. Morgan, in a murder case there could be one of two penalties. One of them might be the death penalty. Do you have any conscientious scruples against the death penalty?

The Prospective Juror: Yes, I do. I do not believe in the death penalty, your Honor.

Mr. Gustafson: I will challenge for cause on that.

The Court: What?

Mr. Gustafson: I challenge him for cause on that issue.

The Court: All right, you are excused.

We had better take a short recess.

(Short recess.)

[fol. 523] (Recess)

Mr. Gustafson: Your Honor, may counsel approach the bench?

The Court: Yes.

(The following proceedings were had at the Judge's bench, outside the hearing of the prospective jurors:)

Mr. Gustafson: Your Honor, I would suggest, and I talked to counsel about this and I believe he is agreeable to it, that the Court ask the juror in the first instance whether he has any conscientious objection to the death penalty, in order not to——

The Court: Waste time?

Mr. Gustafson: Spend the time.

The Court: Well, why don't you ask that?

Mr. Gustafson: Well, I don't have a chance to examine first.

The Court: Well, last.

Mr. Gustafson: Well, because I don't think I have any right at that point to ask that question, since I was only taking the juror on voir dire with respect to Mr. Sullivan's challenge.

The Court: Well, you have been asking the question at other times. I don't think it makes any difference when you ask it.

Mr. Gustafson: Well, when Mr. Sullivan's examination is occurring and he has challenged the juror for cause on [fol. 524] the basis of the fact that the juror has an opinion which he will not set aside in determining a verdict of guilty, I am limited in my then examination to the subject matter covered by Mr. Sullivan and I cannot go beyond that.

The Court: Well, there is no sense in leaving any juror on the jury if he has a conscientious objection to the death penalty.

Mr. Gustafson: That is why I asked that the court ask that question before any examination begins by counsel.

The Court: Are you willing that I do that?

Mr. Sullivan: Yes, I am willing that you do that, certainly.

The Court: All right.

(The following proceedings were had in open court:)

The Court: All right, proceed. I thought we had the box full.

The Clerk: We just excused Mr. Morgan for cause, Your Honor.

The Court: What?

The Clerk: We just excused Mr. Morgan for cause.

The Court: Oh, yes.

The Clerk: Erma S. Behrens—B-e-h-r-e-n-s.

The Court: Is your name Erma S. Behrens?

The Prospective Juror: Behrens.

The Court: Mrs?

The Prospective Juror: Yes.

[fol. 525] The Court: Is it Behrens?

The Prospective Juror: Behrens.

The Court: Behrens?

The Prospective: Yes, sir.

The Court: You have been here all week in the courtroom, haven't you?

The Prospective Juror: Yes.

The Court: So you know generally what this case is all about?

The Prospective Juror: That is true.

The Court: You know that the defendant here, Mrs. Duncan, is charged with the crime of murder?

(The prospective juror nodded affirmatively.)

The Court: And that particular crime could carry one of two penalties if she were found to be guilty. One would be the death penalty. Do you have any conscientious scruples against applying the death penalty?

The Prospective Juror: No, sir.

The Court: In a proper case? What?

The Prospective Juror: No, sir.

The Court: All right, you may inquire.

Mr. Sullivan:

Q. Mrs. Behrens, you reside in Oxnard.

A. Yes, sir.

Q. And may I inquire as to your business or occupation? [fol. 526] A. I work for the American Cleaners in Oxnard.

Q. American Cleaners?

A. Yes.

Q. Is there a Mr. Behrens?

A. No, sir.

Q. Mrs. Behrens, you are aware from what you have heard in the courtroom the last two and a half or three days, that Mrs. Duncan is charged in this indictment, returned by the grand jury of this county, with the murder of one Olga Duncan, are you not?

(The prospective juror nodded affirmatively.)

Q. If the evidence in this case should disclose that Olga Duncan was a daughter-in-law of Elizabeth Duncan, would that cause you to entertain any bias or prejudice against Elizabeth Duncan?

A. No, sir.

Q. If the evidence in this case were to disclose that Olga Duncan at the time she came to her death was pregnant, would that cause you to entertain any bias or prejudice against Elizabeth Duncan?

A. No, sir.

Q. Have you or has any relative of yours or anyone near and dear to you ever been the victim of an assault or crime of violence?

A. No.

Q. Or ever had occasion to be a witness against [fol. 527] any person charged with such a crime?

A. Not to my knowledge.

Q. Is there anything about the nature of this charge that would cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. Are you acquainted with Mr. Roy Gustafson, the District Attorney of this county?

A. No.

Q. Are you acquainted with any of his deputies or members of the staff?

A. Not to my knowledge.

Q. Not to your knowledge. Have you ever been connected with any law enforcement agency?

A. No, sir.

Q. Has any relative of yours or anyone near and dear to you, have they ever been connected with any law enforcement agency?

A. No.

Q. It might be possible that some law enforcement officers may testify as witnesses in this case. If they do, would you be apt to give any greater credence to their testimony than you would that of any other witness merely because they happened to be law enforcement officers?

A. No.

Q. You feel that you could weigh and consider the [fol. 528] testimony of such a witness by the same standard as you would that of any other witness?

A. Yes.

Q. Well, now, in the event that Mrs. Duncan should testify as a witness on her own behalf, would you be apt to deny her the benefit of her own testimony, merely because she happens to be charged with this offense?

A. No.

Q. You understand from what you have heard, that as she sits in court today, the law clothes her with the presumption of innocence, do you not?

A. Yes.

Q. And you understand further from what you heard, that that presumption of innocence goes with her throughout this trial, do you not?

A. Yes.

Q. If you are accepted as a juror in this case, would you require the District Attorney to prove to your satisfaction, or to a moral certainty beyond a reasonable doubt, the guilt of Mrs. Duncan of the crime charged in this indictment?

A. Yes, sir.

Q. After you have heard all the evidence in this case and receive the instructions of the law from His Honor and retired to the jury room and discuss the evidence

with your fellow jurors, would you endeavor to weigh [fol. 529] that evidence in the light of the law as given to you by His Honor and if you yourself have an honest and conscientious, reasonable doubt, as to the guilt of Mrs. Duncan, would you hesitate to resolve that doubt in her favor and vote for a verdict of not guilty?

A. No, sir.

Q. You feel that you could do that, irrespective of what your fellow jurors might say about it?

A Yes, sir.

Q. Or what their opinion might be?

A. Yes.

Q. I don't mean to be repetitious—maybe I am—but how long have you been a resident of Ventura County?

A. About 31 years.

Q. Thirty-one years. Do you subscribe to some of the local papers, Mrs. Behrens?

A. Yes.

Q. And do you sometimes listen to news broadcasts on the radio?

A. Not regularly.

Q. Not regularly. Sometimes you listen to news broadcasts on television?

A. Yes.

Q. Have you been a subscriber to the local papers?

[fol. 530] A. The Oxnard Courier.

Q. For several years?

A. Yes, sir.

Q. Do you recall whether or not you have in the past read anything about this case?

A. Yes.

Q. Do you recall whether or not you read any article in any newspaper that purportedly related the testimony of witnesses who appeared before the grand jury in this matter?

A. I don't believe so.

Q. Do you recall whether or not you read any article in any newspaper which purportedly reported the confession of one Augustine Baldonado?

A. No.

Q. Do you recall whether or not you read any article in

any newspaper which purportedly reported a confession of one Luis Moya?

A. No.

Q. Well, in addition to what you might have read or did read, let's say, in the newspaper concerning this case, did you discuss it with any other persons?

A. Yes.

Q. Is that with many people?

A. Quite a few.

Q. I take it that sometimes it would be discussed [fol. 531] by people who came into the——

A. —business.

Q. The place where you are employed?

A. Yes.

Q. And they discussed the case with you?

A. Yes.

Q. And you did discuss it with them?

A. That's right.

Q. And did you believe that what any of these people said to you concerning the case was the truth?

A. No.

Q. Did you have any reason to disbelieve them?

A. No.

Q. Well, did you disbelieve them?

A. No.

Q. As a result of what you read concerning this case, together with having discussed it with other persons, did you yourself form any opinion with respect to the guilt or innocence of Mrs. Duncan?

A. Yes.

Q. And was that opinion one that was adverse to Mrs. Duncan?

A. Yes.

Q. In other words, you formed an opinion in your own mind that Mrs. Duncan was guilty of this offense, is that correct?

[fol. 532] A. That is right.

Q. Did you ever express that opinion to any of these persons with whom you discussed this case?

A. Yes.

Q. And as you sit in the jury box today, do you still entertain that opinion?

A. Yes.

Q. And is that opinion such that would require some evidence on the part of we, the defense, to overcome that opinion?

A. Yes.

Q. Is that opinion such that it is likely to influence your verdict if you were called upon to act as a juror in this case?

A. I don't think I understand the question.

Q. Well, as you sit in this jury box this afternoon, you have an opinion in your mind?

A. Right.

Q. That Mrs. Duncan is guilty of this charge?

A. Yes.

Q. Isn't that correct?

A. Correct.

Q. If you should have to act as a juror in this case, do you think that any verdict that you might reach would be influenced by the opinion which you now entertain?

A. I don't know.

[fol. 533] Q. You don't know?

A. No.

Q. You couldn't say. Is the opinion which you now entertain such as you feel that it would prevent you from acting and impartially?

A. Yes.

Q. If you yourself were on trial for this identical offense or someone who was very near and dear to you was on trial here today, charged with this identical offense, and their attorney is trying to secure a jury of 12 men and women who were absolutely unbiased and unprejudiced and who would return an absolutely fair and impartial verdict, would you be willing to trust your fate or the fate of some loved one to 12 men and women of your present frame of mind?

A. No.

Q. You don't feel that if you did that, that they could secure an absolutely fair and impartial verdict, is that it?

A. Yes.

Mr. Sullivan: We will challenge Mrs. Behrens for cause, Your Honor.

Mr. Gustafson: I would like to examine Mrs. Behrens, Your Honor.

Q. Mrs. Behrens, suppose that you were selected as a juror and Judge Blackstock told you that even though [fol. 534] you have an opinion that Mrs. Duncan is guilty, based upon what you read in the newspapers, you must decide the case not on what you read in the newspapers and not on the basis of your opinion formed from that, but solely on the basis of the evidence that you hear in court here, that is presented here, would you follow Judge Blackstock's instruction?

A. Yes.

Q. And could you follow it?

A. Yes.

Q. You could and you would?

A. Yes.

Q. Now, if the judge tells you despite the fact that you might have an opinion as to Mrs. Duncan's guilt from what you read in the newspapers, that you nevertheless must not and cannot vote guilty unless proved by the evidence here, beyond a reasonable doubt, that she is guilty, could you and would you follow that instruction?

A. Yes.

Q. And so that if I didn't produce evidence in court, convincing you beyond a reasonable doubt of Mrs. Duncan's guilt, you would, would you not, vote for a verdict of not guilty, despite the opinion that you had, based upon what you read in the newspapers? Isn't that true?

[fol. 535] A. Yes.

Q. So your frame of mind then is one that you would set aside, for the purposes of voting a verdict in this case, whether the verdict be guilty or not guilty, you would set aside your opinion and decide the case solely on the basis of the evidence and the instructions given to you by Judge Blackstock, is that right?

A. Yes.

Q. And in that respect you could be fair, could you not?

A. Yes, I could.

Q. And you would be fair?

A. Yes.

Q. And you could be and you would be impartial?

A. Yes.

Q. Because if you were told that you must not base your verdict on anything other than what you hear in court and you must not base your verdict on any opinion that you had when you came into the jury box, you would follow the judge's instruction in that respect?

A. Yes.

Q. Now, if somebody, as Mr. Sullivan says, near and dear to you were on trial in a case and there were 12 jurors who have the frame of mind that, notwithstanding any opinion that they might come into the jury box with, they would set those aside and decide the case solely and [fol. 536] completely on the basis of the evidence and on the basis of the instructions as applied to that evidence and the instruction given to you by the judge, you would be satisfied, would you not, to have the case of that near and dear friend to be tried by jurors of that frame of mind, wouldn't you?

A. Yes.

Q. So you can and you will, notwithstanding your opinion about Mrs. Duncan's guilt act fairly and impartially on the matter to be submitted to you, if you are selected as a juror?

A. Yes.

Mr. Gustafson: I submit that the juror is not disqualified.

The Court: The challenge is disallowed.

Mr. Sullivan: I have no further questions.

The Court: What?

Mr. Gustafson:

Q. Mrs. Behrens, with respect to this case, do you know Mr. Sullivan or Mr. Frank Duncan or Mrs. Elizabeth Duncan?

A. No.

Q. You don't have any prejudice against law enforcement officers, do you?

A. No.

Q. And I believe you told Mr. Sullivan that you would weigh their testimony by the same rules as are [fol. 537] applicable to the testimony of any other witnesses?

A. Yes.

Q. You realize, don't you, Mrs. Behrens, there are two sides to a lawsuit or we wouldn't be here having a trial?

A. Yes.

Q. And that there is likely to be conflicting evidence; that is, evidence with respect to some particular point on my side that says one thing and on Mr. Sullivan's side that says the opposite?

A. Yes.

Q. That that is likely to occur. And that your duty, as a juror, would be to attempt to ascertain on the basis of all the evidence what is the truth?

A. That is right.

Q. And you will do your best to resolve those questions and decide what the truth is, won't you?

A. Yes.

Q. Now, you heard Mr. Sullivan say that I must prove my case beyond a reasonable doubt before you return any verdict of guilty?

A. Yes.

Q. Now, would the mere fact that there might be differences in the evidence cause you to say, "Well, because of those differences, I am not going to try to figure out what is correct. That is a reasonable doubt to [fol. 538] me. I will vote not guilty"?

A. I don't understand the question.

Q. Well, it is just this, Mrs. Behrens. Some people say that—I am trying to ascertain whether you are one of these people—some people say, "As long as one witness says one thing and one witness says another thing, therefore automatically I cannot decide what the truth is and therefore there is a reasonable doubt and therefore I will vote not guilty, just because there is a conflict in the evidence." You aren't one of those persons, are you?

A. No.

Q. In other words, you will do your best to attempt to ascertain which evidence you believe and which evidence you reject?

A. Yes.

Q. And to come out with the truth on the basis of those conflicting statements in evidence, or conflicting evidence, is that correct?

A. Yes.

Q. Do you understand that question now?

A. Yes.

Q. So that the mere fact that there is a conflict would not cause you in and of itself to have a reasonable doubt?

A. Yes.

[fol. 539] Q. Now, suppose that in the course of this trial you generate or there is generated in you a great deal of sympathy for Mrs. Duncan, but suppose that nevertheless on the basis of the evidence you believe and you are convinced beyond a reasonable doubt that she is guilty, and suppose further that the judge tells you that you are not to allow sympathy to affect your verdict. Will you set aside any such sympathy and vote a verdict of guilty if you are so convinced beyond a reasonable doubt, regardless of that sympathy?

A. Yes.

Q. Now, I think you said that you had no conscientious objection or opinion respecting the death penalty which would keep you from voting for a verdict of guilty in the first degree which could carry with it the death penalty, is that correct?

A. That is correct.

Q. You have no objection?

A. No.

Q. Now, is that same thing true with respect to the fact that the defendant is a woman; that is, do you harbor any notion that the death penalty may be all right in general but shouldn't be applied to a woman guilty of first degree murder?

A. No.

Q. And do you harbor any notion that while the death [fol. 540] penalty may be all right in general, that it should never be applied to a person guilty of first degree murder who didn't personally do the killing but instead encouraged or advised somebody else to do the killing?

A. No.

Q. You hesitated somewhat on that, Mrs. Behrens. This is your considered answer, that you do not have any such opinion in your mind, that it is inapplicable to a first degree murderer who didn't personally do the killing?

A. No.

Q. Do you have any reason that you can think of, Mrs. Behrens, why you couldn't be fair to me, to my side of the case, and to the People of the State of California, as well as fair to the defendant?

A. No.

Mr. Gustafson: Pass for cause.

[fol. 541] The Court: The peremptory is with the People, isn't it?

Mr. Gustafson: I accept the jury as now constituted.

The Court: All right, the peremptory is again with the defendant.

Mr. Sullivan: The defendant will excuse Mrs. Lena M. Garrison, Juror No. 2.

The Court: Call another name.

The Clerk: Edna, initial "E" Newhart, N-e-w-h-a-r-t.

The Court: Is it Mrs. Newhart?

The Prospective Juror: Miss.

The Court: Miss?

The Prospective Juror: Yes.

The Court: Where do you live, Miss Newhart?

The Prospective Juror: The other side of Oxnard.

The Court: The other side of Oxnard?

The Prospective Juror: Yes.

The Court: How long have you lived in Ventura County?

The Prospective Juror: About 18 years.

The Court: Have you ever served on a jury in a criminal case?

The Prospective Juror: No, sir.

The Court: In any case?

The Prospective Juror: No, sir.

The Court: Well, you have been here in the courtroom long enough so you know what this case is all about?

The Prospective Juror: Yes, sir.

[fol. 542] The Court: And is there any reason why you couldn't be absolutely fair and impartial if you should be selected as a member of this jury?

The Prospective Juror: No, sir.

The Court: In this case the defendant is charged with murder, which could be one of two penalties, either life imprisonment or death. Do you have any conscientious scruples against the death penalty?

The Prospective Juror: No, sir.
The Court: Go ahead.

Mr. Sullivan:

Q. Miss Newhart, may I inquire as to your business or occupation?
The Prospective Juror: I do not work.

Mr. Sullivan:

Q. I'm sorry?
A. I am unemployed.
Q. Unemployed?
A. Yes, sir.
Q. Have you ever been employed?
A. Yes, sir.
Q. What kind of work do you generally do when you are employed?
A. Well, I have worked in various offices.
Q. You do clerical work of some sort or other?
A. Yes.
Q. All right, thank you. Miss Newhart, you understand from what you have already heard about this case, being [fol. 543] in the courtroom here, that Mrs. Duncan is charged in this indictment with the murder of one Olga Duncan, do you not?
A. Yes, sir.
Q. Is there anything about the nature of that charge that would cause you to entertain any bias or prejudice against Mrs. Duncan?
A. No, sir.
Q. If the evidence in this case should disclose that Olga Duncan was the daughter-in-law of Elizabeth Duncan, would that cause you to entertain any bias or prejudice against Elizabeth Duncan?
A. No, sir.
Q. If the evidence in this case should disclose that at the time Olga Duncan came to her death she was then pregnant, would that cause you to entertain any bias or prejudice against Elizabeth Duncan?
A. No, sir.
Q. Have you or has any relative of yours or anyone near and dear to you ever been the victim of a crime of passion or violence?

A. No, sir.

Q. Or ever had occasion to be a witness against any person charged with a similar type of offense?

A. No, sir.

Q. Are you acquainted with Mr. Roy Gustafson, the District Attorney of this County?

[fol. 544] A. No.

Q. Are you acquainted with any of his deputies or members of his staff?

A. Not to my knowledge.

Q. Not to your knowledge. Is anyone near and dear to you or related to you connected in any manner with any law enforcement agency?

A. I, myself, during the War worked as a security police guard.

Q. A security police guard?

A. Yes, sir.

Q. Was that here in Ventura County?

A. Yes. It was under the Navy's jurisdiction.

Q. Under the Navy?

A. Yes, sir.

Q. That had a certain amount of enforcement work connected with it, did it?

A. A certain type.

Q. Well, in addition to that how about any relatives or anyone near and dear to you?

A. No, sir.

Q. Well, from the experience that you had on that particular occasion, would that particular experience cause you to give any greater credence to the testimony of a law enforcement officer than you would any other witness if some law enforcement officer should testify in this case?

[fol. 545] A. No, sir.

Q. Would you be apt to give any greater credence to the testimony of a law enforcement officer than you would any other witness?

A. No.

Q. Merely because he happened to be a law enforcement officer?

A. No, sir.

Q. Do you feel that you could weigh and consider the

testimony of such a witness by the same standard as you would that of any other witness; is that correct?

A. Yes, sir.

Q. Well, let's assume that Mrs. Duncan takes the witness stand in this courtroom and testifies as a witness in her own behalf. Would you be apt to deny her the benefit of her own testimony merely because she happens to be accused of this offense?

A. I would not.

Q. You understand from what you have already heard that she is presumed to be innocent of the charge contained in this indictment, do you not?

A. I certainly do.

Q. And that that presumption goes with her throughout this trial?

A. Yes.

Q. Do you feel that if you are accepted as a juror in this [fol. 546] case, that you could accord to her the benefit of that presumption of the law?

A. I certainly could.

Q. Do you feel that you could keep your mind open respecting the guilt or innocence of Mrs. Duncan until you have heard all of the evidence in this case?

A. Yes, sir.

Q. That is, not only the evidence offered on behalf of the People, but any evidence that is offered on behalf of Elizabeth Duncan, the defendant; is that right?

A. Yes, sir.

Q. Well, let's assume that you are accepted as a juror and you have heard all of the evidence in the case and you have received instructions as to the law from His Honor. You have retired to the jury room. You have fully and fairly discussed that evidence with your fellow jurors. You have endeavored conscientiously to weigh it in the light of the law as given to you by his Honor, and you say to yourself, "Well, I conscientiously entertain a reasonable doubt as to the guilt of Elizabeth Duncan." Under those circumstances would you hesitate to resolve that doubt in her favor and vote for a verdict of not guilty?

A. I wouldn't hesitate at all.

Q. You wouldn't hesitate at all?

A. No.

Q. Would you continue to do that so long as you conscien-
[fol. 547] tiously entertained a reasonable doubt as to her guilt; is that right?

A. I would continue to do so, yes.

Q. Would you do that irrespective of how your fellow jurors might feel about this matter?

A. Yes, sir.

Q. Now, do you subscribe to any of the local papers?

A. My folks do, yes.

Q. You live at home?

A. Yes.

Q. With your folks?

A. Yes, I do.

Q. And they subscribe to one or more of the local papers?

A. Yes.

Q. Is that it? Do you sometimes listen to radio broadcasts of news events?

A. No.

Q. Do you ever listen to news broadcasts on television?

A. Occasionally.

Q. Occasionally. Have you read anything about this case in the newspapers?

A. In the last couple of evenings I have.

Q. Well, prior to the last couple of evenings——

A. No.

[fol. 548] Q. —have you ever read anything about it?

A. No, I haven't.

Q. Never at any time?

A. No, sir.

Q. You didn't read anything about this case during the month of December?

A. No, I'm afraid I didn't.

Q. You are afraid you didn't. What paper is this that your folks subscribe to?

A. The Ventura paper.

Q. The Ventura Free-Press?

A. Yes, sir.

Q. And the only thing that you have read in the last couple of evenings was something that had to do with the attempt to select a jury in this case?

A. That's right.

Q. Is that it?

A. Yes, sir.

Q. Well, prior to that time you would say you read nothing about it?

A. No, I didn't.

Q. Have you in the past discussed this case with any person?

A. I heard it discussed, but I wasn't in the discussion.

Q. You have been present when you heard other people talk about it?

[fol. 549] A. That's right.

Q. And these other people, how many other people have you heard talk about it, just approximately? I know you can't tell exactly.

A. My mother and father and one other gentleman.

Q. One other gentleman?

A. Yes.

Q. And as a result of what you heard those people say about the case did you, yourself, form any opinion respecting the guilt or innocence of Mrs. Duncan?

A. No, I did not.

Q. So that you have never at any time formed any opinion with respect to her guilt or innocence; is that correct?

A. That's correct.

Q. And as you sit in the jury box today I take it then that you have no opinion regarding either the guilt or innocence of Mrs. Duncan?

A. I do not.

Q. You feel that if you are accepted as a juror in this case, that you could decide the question of her guilt or innocence solely and exclusively from the evidence as you hear it from this witness stand; is that right?

A. Yes, that's right.

Q. And you feel that whatever you heard discussed at home or by this gentleman that you speak about, whatever you heard said by any of those persons would not influence [fol. 550] your verdict one way or the other; is that correct?

A. That's correct.

Q. Now, I just want to ask one more question. Do you know of any reason whatsoever that you could not give to Mrs. Duncan a fair and impartial trial?

A. No, I do not.

Mr. Sullivan: Thank you. Pass for cause.

Mr. Gustafson:

Q. Suppose that you are selected to serve as a juror in this case and the Judge tells you that the burden of proving the case against Mrs. Duncan is on me; that you can't vote a verdict of guilt unless I prove the case, and that he also tells you that I need prove it only beyond a reasonable doubt and not beyond any doubt whatever, are you willing and able to follow that instruction?

A. Yes, sir.

Q. You wouldn't require me then to prove that she is guilty beyond any doubt whatever in order for you to vote for a verdict of guilty?

A. No, sir.

Q. And if the facts disclosed by the evidence should cause you to feel any sympathy for Mrs. Duncan, would you be able to set aside that sympathy, if the Judge tells you that is the rule of law, and decide her guilt or innocence solely on the basis of the evidence in the case and the law as given to you by Judge Blackstock?

A. Yes, sir.

[fol. 551] Q. Now, if the evidence is conflicting, as it is likely to be on at least some points, if not all points in this case, so that the evidence I present causes you to believe that the thing is one way and the evidence the other side presents would indicate that the opposite is the truth, would you conscientiously as a juror attempt to weigh that evidence and decide what is the truth based on the conflicting evidence?

A. Yes, I would.

Q. And you have already heard, I believe, that since I must prove the case beyond a reasonable doubt before you vote guilty, would you say that just because there are two sides to it and conflicting evidence, that that alone would cause you to have a reasonable doubt and you wouldn't go any further to decide which is the truth and which isn't?

A. No.

Q. That wouldn't do that to you, would it?

A. No.

Q. In other words, to the best of your ability you would try to decide what the truth was as between the two conflicting pieces of evidence?

A. Yes, sir.

Q. Now, I understood you to say that you do not have a conscientious opinion regarding the death penalty which would keep you from voting for a verdict of guilty of first degree murder, if you found under the evidence that that verdict was the proper one?

[fol. 552] A. That's right.

Q. That is your state of mind respecting that?

A. Yes.

Q. This is a very serious and important question. I want you to express yourself truly on that point. Do you have any reservations in your mind about the applicability of the death penalty to a woman as opposed to a man?

A. No.

Q. So that you are not of the frame of mind that the death penalty may be applicable in a particular case, but you wouldn't apply it because the defendant is a woman? That is not your frame of mind, is it?

A. No, sir.

Q. Do you have any mental reservations about applying the death penalty to a defendant who is guilty of murder in the first degree, but who, under the evidence, did not personally do the killing, but who is guilty of murder in the first degree by reason of having encouraged or advised somebody else to do the killing?

A. No, sir.

Q. You don't know Mr. Sullivan?

A. No, sir, I do not.

Q. Do you know Mr. Frank Duncan?

A. No.

Q. Do you know the defendant, Elizabeth Duncan?

[fol. 553] A. No.

Q. You wouldn't be biased in favor of Mr. Sullivan's side of the case, would you, simply because I don't have a live person sitting here as my client, but I represent this entity called the People of the State of California, whereas Mr. Sullivan has a person sitting there as his client?

A. No, sir, I wouldn't.

Q. You could give my side of the case just as fair treat-

ment as you would his despite the absence of anyone sitting here as a particular client; is that right?

A. Yes, sir.

Q. Can you think of any reason why you might not be a fair and impartial juror in deciding this case?

A. I cannot.

Mr. Gustafson: Pass for cause.

The Court: All right. Is there any member of this prospective jury sitting in the jury box who has conscientious scruples against applying the death penalty in a murder case? If there is, hold up your hands. (Pause.) All right, the peremptory is with the People.

Mr. Gustafson: I accept the jury as now constituted.

The Court: The peremptory is now with the defendant.

Mr. Sullivan: The defendant will excuse Mr. Robert H. Zuhlke, Juror No. 9, your Honor.

The Court: Call another name.

The Clerk: Donald L. Ruggles, R-u-g-g-l-e-s.

[fol. 554] The Court: Mr. Ruggles, you have been in the courtroom here the last few days?

The Prospective Juror: Yes.

The Court: And you have heard everything that has been said here?

The Prospective Juror: Yes.

The Court: So you know what the case is all about?

The Prospective Juror: Yes.

The Court: Do you have any reason why you couldn't be fair and impartial in this case?

The Prospective Juror: No.

The Court: The defendant in this case is charged with murder. There could be one of two penalties. One of them could be death. Do you have any conscientious scruples against the death penalty?

The Prospective Juror: No.

The Court: Go ahead.

Mr. Sullivan:

Q. Mr. Ruggles, may I inquire as to your business or occupation?

A. Farmer.

Q. And are you married, Mr. Ruggles?

A. Yes.

Q. You have children?

A. Two.

Q. You understand from what you have already heard about this case that Mrs. Duncan is charged in this indictment with the murder of one Olga Duncan; is that correct?

[fol. 555] A. I understand.

Q. If the evidence in this case should disclose that Olga Duncan was the daughter-in-law of Elizabeth Duncan, would that cause you to entertain any bias or prejudice against Elizabeth Duncan?

A. No.

Q. If the evidence in this case should disclose that Olga Duncan at the time she came to her death was then pregnant, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. Have you or has any relative of yours or anyone near and dear to you ever been the victim of a crime of passion or violence?

A. No.

Q. Or ever had occasion to be a witness against any person charged with such a crime?

A. No.

Q. Is there anything about the nature of the charge itself that would cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. Have you ever been connected in any manner with any law enforcement agency?

A. No.

[fol. 556] Q. Has any relative of yours or anyone near and dear to you been connected in any manner with any law enforcement agency?

A. No.

Q. Are you acquainted with Mr. Roy Gustafson, the District Attorney of this County?

A. I know him, yes.

Q. Do you know him personally?

A. On a limited social basis I know him.

Q. On a limited social basis?

A. To the extent that he probably would not ask me to

his house, nor I to his, but on at least one occasion we have been in the home of a mutual friend for a brief period.

Q. Are you acquainted with any of the deputies in his office or members of his staff?

A. I know Mr. Hathaway from service on the school board. Mr. Hathaway is the District Attorney's office representative for the school districts.

Q. I see.

A. Therefore, I am acquainted with Mr. Hathaway on perhaps a business basis.

Q. As a result of your acquaintanceship with Mr. Hathaway and your acquaintanceship with Mr. Roy Gustafson, would that fact in any manner whatsoever tend to cause you to entertain any bias or prejudice against Mrs. Duncan in this particular case?

[fol. 557] A. No, sir.

Q. Do you feel that despite that acquaintance with those gentlemen that we could start out on an even basis with the prosecution in this case so far as you are concerned?

A. Yes, I feel so.

Q. And you don't feel that that acquaintance would influence your verdict one way or the other?

A. No.

Q. Is that correct?

A. That's correct.

Q. All right. Well, it might be that some law enforcement officers may testify in this case. If they should do so, would that acquaintance with Mr. Hathaway and Mr. Gustafson cause you to give any greater credence to the testimony of a law enforcement officer than you would that of any other witness?

A. No.

The Court: Merely because he is a law enforcement officer, you mean, don't you?

Mr. Sullivan: I'm sorry. I didn't understand.

The Court: You are leaving out a part of the usual question that you have been asking and that is merely because he is a law enforcement officer. Is that what you intended to ask?

Mr. Sullivan: No, that wasn't the question I asked.

The Court: Well, all right, go ahead.

[fol. 558] Mr. Sullivan: I am going to ask that question now, however.

The Court: What?

Mr. Sullivan: I intend to ask that question now, your Honor.

The Court: Yes.

Mr. Sullivan:

Q. In the event a law enforcement officer should testify in this case, would you be apt to give any greater credence to his testimony than you would any other witness merely because he happens to be a law enforcementt officer?

A. No.

Q. Do you feel that you could weigh and consider the testimony of such a witness by the same standards as you would that of any other witness who might be called in this case?

A. Yes.

Q. Let's assume that Mrs. Duncan takes the witness stand and testifies in her own behalf at this case. Would you be apt to deny her the benefit of her own testimony merely because she happens to be accused in this indictment of this offense?

A. No.

Q. You understand from what you have heard that as she sits in court today the court clothes her with the presumption of innocence, do you not?

A. I understand that.

[fol. 559] Q. And you understand that that presumption goes with her throughout this trial, do you not?

A. Yes.

Q. If you are accepted as a juror in this case, do you feel that you could accord to her the benefit of that presumption?

A. Yes.

Q. Do you feel that if you are accepted as a juror in this case, that you could keep your mind open respecting the guilt or innocence of Mrs. Duncan until you have heard all of the evidence?

A. Yes.

Q. That is, not only the evidence offered on behalf of

the prosecution, but any testimony that might be offered on behalf of the defense?

A. Yes.

Q. As well?

A. Yes.

Q. Do you subscribe to any of the local papers?

A. Yes.

Q. And do you occasionally listen to news broadcasts on radios?

A. Occasionally.

Q. On the local radio station?

(Prospective juror nods head affirmatively.)

Q. Do you also from time to time listen to news broad-
[fol. 560] casts on the television?

A. Occasionally.

Q. Have you in the past read anything in the newspapers concerning this case?

A. I have read some of the material, yes.

Q. Have you heard any radio broadcasts concerning this case?

A. I think not beyond the headline-type of report.

Q. And have you heard any newscasts on television concerning this case?

A. None.

Q. Well, Mr. Ruggles, in addition to what you did read concerning it and what you heard on radio concerning it, have you ever discussed this case with any other persons?

A. I have.

Q. And have those persons with whom you discussed it talked about the case to you?

A. Yes.

Q. Could you tell us approximately how many people you have discussed this case with?

A. Perhaps 10.

Q. All right. Those people with whom you discussed it or whom you heard discuss this case, did you believe that what they said concerning it was the truth?

A. That is confusing to me. Do you mean that I think that they thought that they were telling the truth?

[fol. 561] Q. Did you yourself believe what they said was the truth concerning this case?

A. I can only presume that their information came from the newspaper.

Q. You don't know that?

A. I don't know that, but I say in my conversation with them I would assume that such is the case. To follow that up, I would not believe everything that I heard.

Q. Well, then would it be fair to say that some of the things that were told to you by these people with whom you discussed this case, you did believe to be true; that is, some of the things they said, not all of them?

A. It is possible, yes.

Q. These people with whom you discussed this case, you didn't know or you don't know now whether they actually had any personal knowledge concerning the matters that they discussed with you about this case, do you?

A. I do not know.

Q. And, of course, you don't know whether any of those persons with whom you did discuss this case might be witnesses in this case, do you?

A. Of my own knowledge, no.

Q. You don't know who the witnesses are that are going to testify here, isn't that right?

[fol. 562] A. That is right.

Q. Now, as a result of what you yourself read or heard discussed concerning this case, Mr. Ruggles, did you yourself form any opinion regarding the guilt or innocence of Mrs. Duncan?

A. Yes.

Q. And was that opinion that you formed one that was adverse to Mrs. Duncan?

A. Yes.

Q. In other words, you have in the past formed an opinion in your own mind that she was guilty of this offense, is that correct?

A. To the extent that I have also had the opinion that it has been completely impossible to find printed newspaper evidence defending Mrs. Duncan. Give me credit for that.

Q. I certainly will give you credit for that. Everything that you read or heard concerning this case was adverse to her, is that right?

A. Yes.

Q. And that caused you, what you read and heard that

was adverse to her, caused you to form an opinion that she was guilty of this offense, is that right?

A. Would you rephrase that?

Q. Well, I take it that whatever opinion you reached could only have been reached as a result of what you [fol. 563] read or heard concerning this case, is that right?

A. That is true.

Q. In other words, you aren't going to form an opinion if you didn't hear something about it, would you?

A. That is true.

Q. But the opinion which you did form as a result of what you read or heard about the case, was that Mrs. Duncan was guilty of this offense, isn't that right?

A. That is true.

Mr. Sullivan: Your honor, do you wish to adjourn now? I'm going to be a few minutes longer, and the District Attorney will want to examine this juror.

The Court: Well, go ahead. We will stay a little later tonight.

Mr. Sullivan: All right.

Q. As you sit in the jury box today, do you still have that same opinion?

A. Yes.

Q. And is that opinion such that it would require some evidence on the part of we of the defense to overcome?

A. No, because as I understand it, the evidence needs to be presented only by the District Attorney's side of the case.

Q. You mean you would decide it only on the evidence that you hear from the District Attorney's side of the case? [fol. 564] A. I would decide it only on the evidence that I heard in the trial.

Q. Well, you now entertain an opinion to the effect that Mrs. Duncan is guilty, don't you?

A. Yes.

Q. That is your opinion as you sit in this jury box today, is that right?

A. Yes.

Q. Well, is that opinion such that Mrs. Duncan would have to produce some evidence to cause you to change that opinion?

A. If the District Attorney presents evidence which points to her guilt, certainly she will have to defend it.

Q. That is right.

A. Well, then the answer to your question—you haven't told me whether or not the District Attorney has presented any evidence. Of course, I assume that he is going to. If it isn't refuted, then it would stand.

Q. What?

A. Then it would stand in my mind, if not refuted. However, if it were refuted, then that would not stand in my mind.

Q. In other words, we would have to refute it in order for you to overcome your present opinion, is that right?

[fol. 565] A. I'm not sure that I am following your reasoning.

Q. Well, in a nut shell, what I'm trying to find out is this: I know that you entertain an opinion that she is guilty and I wanted to know if that opinion is such that we of the defense are going to have to present some evidence to cause you to overcome that opinion?

Mr. Gustafson: Your Honor, I am going to object to that as incompetent, irrelevant and immaterial, since a juror may entertain an opinion of guilt or innocence, as the case may be, and may legitimately maintain that opinion until it is changed by some evidence. But that isn't the question. The question is whether or not, notwithstanding the opinion, the juror will fairly and impartially try this case and decide this case on the evidence to be submitted.

The Court: Yes. Objection is sustained. And, Mr. Ruggles, in this case wherein the defendant is charged with murder, and any other case, for that matter, criminal case, the prosecution—that is represented by Mr. Gustafson—the prosecution must prove the defendant guilty to a moral certainty and beyond a reasonable doubt before you could convict here. So after the prosecution gets through putting on their evidence, then the defendant has a right to put on rebuttal testimony, put on her case, and you consider the whole evidence, all of it, not just one [fol. 566] side but both sides, and if there is a conflict, you must, it is your duty, to resolve the conflict one way or the other. If you think that in spite of any evidence that is educed by the defendant, the prosecution still proved the

defendant guilty beyond a reasonable doubt, then you would have to find her guilty. But after you consider all the evidence as a whole, if you have a reasonable doubt about the guilt or innocence of the defendant, the law would require you in the jury box to vote not guilty. You understand that, don't you?

The prospective Juror: Yes, sir.

The Court: Go ahead.

Mr. Sullivan:

Q. Well, now let's assume, Mr. Ruggles, that your wife was on trial here today, charged with this identical offense, that her attorney was trying to secure a jury of 12 people who would be absolutely unbiased and unprejudiced and who would render a fair and impartial verdict, based upon the evidence in this case. Would you be willing to trust the fate of your wife to 12 jurors of your present frame of mind?

A. Yes.

Q. Do you feel that if you did do that, that your wife would receive a fair and impartial trial?

A. Yes.

Q. And you would be satisfied with a verdict that would be rendered by a jury of your present frame of mind, [fol. 567] is that right?

A. Yes.

Q. Well, do you know of any reason whatsoever why you cannot give to Mrs. Duncan a fair and impartial trial?

A. I know of none.

Mr. Sullivan: All right. I have no further questions.

Mr. Gustafson:

Q. Mr. Ruggles, these persons who spoke to you about this case did not purport to be speaking to you from personal knowledge of the facts of the case, did they?

A. They did not.

Q. And I believe you said that you had read matters in the newspapers and had formed your opinion from what you had read, and that everything that you had read was adverse to Mrs. Duncan. Did you not read in the news-

papers in the course of these things that Mrs. Duncan has denied her guilt in this matter?

A. I'm not sure of that—I do not recall having read that.

Q. You don't recall that. Now, you have told Mr. Sullivan that you are acquainted with me and you have said that that will not cause you to be prejudiced against his client or in favor of my side of the case. What I would like to ascertain, Mr. Ruggles, is whether the fact [fol. 568] that you know me might cause you or would cause you to lean over backwards not to be favorable to me and to lean so far over that you would be favorable to his side of the case merely because you knew me?

A. I don't believe so.

Q. Now, you have heard the questions that I've asked of the other 11 persons who are sitting in the box and the answers that they gave to those questions, have you not, Mr. Ruggles?

A. Yes, I have.

Q. Would your answers to any of those questions be any different than the answers which the other persons gave?

A. No.

Q. I take it then, from that, that you have no conscientious opinion respecting the death penalty which would preclude you from voting for a verdict of guilty of first degree murder to which the death penalty might apply?

A. No.

Q. And you would refuse to impose the death penalty on the sole basis that the defendant was a woman?

A. No.

Q. And you would not refuse to impose the death penalty on a person guilty of first degree murder on the sole basis that the murder which was committed was by encouraging someone else to kill a person rather than [fol. 569] directly killing a person?

A. I would not.

Mr. Gustafson: Pass for cause.

The Court: All right. The peremptory is with the People.

Mr. Gustafson: I accept the jury as now constituted.

The Court: The peremptory is now with the defendant.

Mr. Sullivan: The defendant will excuse Mrs. Erma S. Behrens, Juror Number Seven.

The Court: All right. Call another name.

(The prospective juror was excused.)

The Clerk: Mrs. Evelyn H. Bartels—B-a-r-t-e-l-s.

The Court: All right, the court will now adjourn until tomorrow morning at 10:00 o'clock.

(Whereupon, at 4:42 o'clock P.M. the recessed proceedings until February 19, 1959, at 10:00 o'clock.)

[fol. 570] Ventura, California, February 19, 1959, 10:00 A.M.

The Court: By stipulation Mr. Carl Beasley is excused.

Mr. Gustafson: So stipulated.

Mr. Sullivan: So stipulated, Your Honor.

The Court: All right, you may proceed. The prospective jurors that have been examined are now in the box.

Prospective Juror Bartels: Your Honor, I was the one that was called last night.

The Court: Yes.

The Prospective Juror: I wonder if I could speak before I am interviewed. I won't say anything I shouldn't.

The Court: How is that? I don't get it.

The Prospective Juror: I wonder if I could speak before I am interviewed. I won't say anything I shouldn't. I wonder if I have your permission to speak for a minute without interruption?

The Court: You mean you want to be excused?

The Prospective Juror: No, I don't want to be excused. I just want to—I wrote down some answers that I know will be asked to me, and I'm nervous and jittery and I wondered if I could read them.

The Court: Well, you don't want to be excused?

The Juror: No. Just a few minutes.

[fol. 571] The Clerk: She wants to speak, Your Honor. She has some things written down.

The Court: What?

The Clerk: She has some things written out and she just wants to speak without being interrupted for a few moments.

The Court: No, I don't think that would be proper.

The Prospective Juror: It is just the answers——

The Court: I know, but if you want to be excused and don't want to serve on this jury and you have a legitimate excuse, the lawyers probably will stipulate to it, but so far as you speaking, that's entirely irregular.

The Prospective Juror: Oh, all right. I just had written down some answers that I knew would be asked me.

The Court: You will have an opportunity to answer questions.

The Prospective Juror: What?

The Court: You will have an opportunity to answer questions.

The Prospective Juror: Okay.

The Court: If you have got something to say, probably you will have the opportunity to say it then.

Go ahead.

Mr. Sullivan: Thank you, Your Honor.

Q. Mrs. Bartels, I gather from the remarks that you have made to His Honor that you already have given some [fol. 572] consideration to the questions which you have heard asked of the prospective jurors in this case; is that right?

A. Yes, yes.

Q. Maybe we can develop your answers to those questions as we go along. The Court feels that this is the proper way to proceed in the matter, and I know the Court wants to know your answers, but he feels that it should be elicited by the attorneys. Sometimes this is a rather tedious process.

A. That was the reason.

Q. I understand. We, ourselves, get a little nervous about this tedious process and it tires everybody out.

Mrs. Bartels, you live in Fillmore, do you not?

A. Yes, a rural route in Fillmore, Bartsdale.

Q. May I inquire as to your business or occupation, Mrs. Bartels?

A. I am a housewife and homemaker.

Q. And is there a Mr. Bartels?

A. Yes, sir.

Q. May I inquire as to his business or occupation?

A. He is a rancher.

Q. You know from what you have already heard in this courtroom that my client, Elizabeth Duncan, is charged in this indictment with the murder of one Olga Duncan, do you not?

[fol. 573] A. Yes.

Q. Is there anything about the nature of that charge that would cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. Assuming that the evidence in this case should disclose that Olga Duncan, the alleged victim of this alleged murder, was the daughter-in-law of Elizabeth Duncan. Would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. Do you have a family?

A. Yes, I do.

Q. Assuming that the evidence in this case should disclose that Olga Duncan at the time she came to her death was then pregnant. Would that cause you to entertain any bias or prejudice against Elizabeth Duncan?

A. No.

Q. Have you or has any member of your family or anyone near and dear to you ever been the victim of a crime of passion or violence?

A. No.

Q. Or ever had occasion to be a witness against any person charged with a similar offense?

A. No.

Q. Are you acquainted with Mr. Gustafson, the [fol. 574] District Attorney of this County?

A. No, I am not. I have just seen his picture in the paper.

Q. Are you acquainted with any of the deputies in his office or any of the members of his staff?

A. Not that I know of.

Q. At least as you sit in the jury box today you are not conscious of an acquaintanceship with them?

A. No.

Q. Have you ever been connected with any law enforcement agency?

A. I haven't.

Q. Has any relative of yours or anyone near and dear to you ever been connected in any manner with any law enforcement agency?

A. My father was the Judge of the Justice Court in Fillmore for 20 years.

Q. I see.

A. And my husband served on the grand jury in 1953.

Q. I see. Well, let me ask you this: Assuming that some law enforcement officers should be called as witnesses in this case, would the fact that your father was a Justice of the Peace in Fillmore or that your husband some five or six years ago was a member of the grand jury of this County, would that in and of itself cause you to give any [fol. 575] greater credence to the testimony of a law enforcement officer?

A. No.

Q. And the mere fact that your father at one time was a Justice of the Peace or that your husband was at one time a member of the grand jury of this County, would that cause you in any manner whatsoever to give more consideration, let's say, to the prosecution's side of this case?

A. No.

Q. In other words, that wouldn't influence your verdict in this case one way or the other?

A. No.

Q. You could decide the guilt or innocence of Mrs. Duncan just the same as though your father, let's say, was a rancher?

A. Yes.

Q. And your husband had never been a member of the grand jury; is that right?

A. Yes.

Q. You understand from what you have heard in Court that Mrs. Duncan as she sits at counsel table today is clothed with the presumption of innocence?

A. Yes.

Q. And you understand also from what you have heard in this courtroom that that presumption goes with her throughout this entire trial?

[fol. 576] A. Yes.

Q. And you further understand, do you not, from what you have already heard that it is the duty of the prosecu-

tion to prove to the satisfaction of the members of the jury who try her to a moral certainty and beyond a reasonable doubt her guilt of the offense of which she is charged?

A. Yes.

Q. And that so long as any member of the jury entertains a reasonable doubt as to her guilt, it is their sworn duty under the law to vote for a verdit of not guilty?

A. Yes.

Q. Do you feel that if you are accepted as a juror in this case, that you could and would do just that?

A. Yes.

Q. You also understand from what you have heard that this trial is likely to be a protracted one?

A. Yes.

Q. It may take several weeks to try. Assuming that this trial should run some four, five or six weeks and is going to take the time of the members of this jury to sit here day after day to hear it. Would the length of this trial in any way prevent you from rendering a fair and impartial verdict in this matter?

A. No.

[fol. 577] Q. You would be willing to devote your time and attention to it, regardless of how long this trial would last?

A. Yes.

Q. Mrs. Bartels, do you subscribe to any local papers?

A. The LA Times, the Sfar-Free Press and Fillmore Herald.

Q. Do you sometimes listen to newscasts, news broadcasts on the radio?

A. Sometimes, not regularly.

Q. Not regularly. Do you sometimes listen to news broadcasts on television?

A. Once in a while.

Q. Have you been a subscriber to these newspapers for quite sometime past?

A. Many years.

Q. Have you ever read anything about this particular case?

A. I have read some but not all.

Q. Do you recall that you read something about the case?

A. Yes.

Q. In other words, you have some information or something in your mind that you know from what you have read in the past, something about this case, but not all the details, is that correct?

[fol. 578] A. No.

Q. Do you know whether or not you read anything in the newspapers which purported to report the testimony concerning this case that was taken before the Grand Jury?

A. No, I didn't read that.

Q. Do you recall whether or not you read anything which purported to report an alleged confession of one Augustine Baldonado?

A. I just read the headlines on that.

Q. Do you recall whether or not you read anything in the newspaper which purportedly reported a confession of one Luis Moya?

A. No, I don't remember.

Q. You don't remember that. Do you remember whether or not you read anything in the newspapers which purportedly reported statements concerning this case that were made by Mr. Roy Gustafson, District Attorney of this County?

A. No, I didn't.

Q. Do you recall whether or not you ever heard any broadcasts on the radio which purportedly reported the confession of one Luis Moya?

A. No.

Q. Well, from what you read concerning this case in the past, regardless of how much it was that you read, did you yourself form any opinion with respect to the guilt or innocence of Mrs. Duncan?

[fol. 579] A. I haven't formed an opinion because I haven't thought about it. I haven't had time to think about it.

Q. So that you yourself have never formed an opinion regarding the guilt of——

A. I just haven't thought about it.

Q. In addition to what you read concerning this particular case, did you discuss the case with any person?

A. I haven't discussed it but I have mentioned it to my mother and my minister.

Q. Have you heard other people discuss it?

A. No, not discuss it, just mention it.

Q. Just mention it. Well, you did discuss it with your mother?

A. I just mentioned it. I didn't discuss it.

Q. You just mentioned it to your mother and you just mentioned it to your minister, is that right?

A. Yes.

Q. Well, from having mentioned it to your mother or your minister, did that cause you to form any opinion?

A. No, it didn't.

Q. And you have never then, as I understand your answer, at any time formed any opinion in your own mind concerning either the guilt or innocence of Mrs. Duncan?

A. I just haven't thought about it.

The Court: Wait a minute. What was that answer?

(Record read.)

[fol. 580] Mr. Sullivan:

Q. Well, let me ask you this, Mrs. Bartels:

The Court: When you say that you just haven't thought about it, you mean to say that you have not formed any opinion?

The Prospective Juror: No, I haven't.

The Court: All right. That is what I want to know.

The Prospective Juror: I haven't had it in my mind.

Mr. Sullivan:

Q. Let's assume, Mrs. Bartels, that you yourself—God forbid—were on trial here today for the identical offense that is charged in this indictment against my client, Elizabeth Duncan, and your attorney was endeavoring to secure for you a jury of 12 men and women who were absolutely unbiased and unprejudiced, who would render a fair and impartial verdict. Would you be willing to trust your fate to a jury composed of men and women of your present frame of mind?

A. Yes.

Q. Do you know of any reason—this includes anything that is in your own mind—why you couldn't act fairly and impartially as a juror in this case?

A. No.

Q. You indicated to the Court that you wanted to make some statement, is that right?

A. I just had written down these questions that I thought you would ask and because I was jittery and knew that I would be the first one called.

Q. Don't be jittery.

[fol. 581] A. Well, that is easy to say.

Q. Is there anything in which you have written down that I haven't asked you about, that you feel that you should tell me that you think might have some bearing upon your qualifications as a juror in this case?

A. No. I don't want to act but because of being a citizen, I feel that is the duty of anyone that can.

Q. You are absolutely right. You certainly are. I agree with you. I know that it is not a pleasant duty for anyone to perform.

A. No, it isn't.

Q. But it is a duty that as a citizen we sometimes have to perform.

A. Only because we try to be good citizens.

Q. That is right. I certainly agree with you. So that there isn't anything that you have written down that you feel that you should tell me about, that, let's say, would have any bearing upon your qualifications to act as a juror in this matter, is that right?

A. I think that is so.

Mr. Sullivan: All right. Pass for cause.

Mr. Gustafson:

Q. Mrs. Bartels, I don't blame you for writing the questions down. I write the answers down myself. Tell me this: You said that you have discussed this, mentioned this case, to your minister and to your mother. I am wondering, is there any reason why, or do you have any [fol. 582] conscientious opinion regarding the death penalty, which would prevent you from voting for a verdict of

murder in the first degree, one of the penalties for which is death in the gas chamber?

A. No, I don't, and that is what I have discussed many times. I think that it is the only thing, as our law stands now, but I think something should be done, and probably by judges and attorneys, psychiatrists, psychologists, doctors, to our laws, because we all know people with criminal tendencies, sometimes in their youth, because of brain damage or something, that some of these things could be prevented. Now as the law stands, as I understand it, the hands are tied of law enforcement officers. It is too deep for me but I have given great thought to it and I do believe in capital punishment now.

Q. You do. And would you be of the frame of mind that while you believe in capital punishment and are willing—and supposing that you have a case in which you think that it is the appropriate punishment to impose—would you nevertheless say that you wouldn't oppose it because the person is a woman?

A. No.

Q. You have no such mental reservations about capital punishment?

A. No. I would feel like it is a protection to society.

Q. Now with respect to the death penalty, do you [fol. 583] have any reservations in your mind that would say that it should never be applied, even though a person is guilty of first degree murder, if that person didn't herself or himself kill?

A. No.

Q. All right. I assume that you don't know Mr. Sullivan or Mr. Frank Duncan or Mrs. Duncan, is that right?

A. No.

Q. I think you have heard my question the last few days with respect to your willingness to attempt to decide what the true facts are, when there are conflicts in the evidence?

A. Yes.

Q. In other words, as Mr. Sullivan has many times said, there are two sides to the lawsuit. As I have said, we wouldn't be here if there weren't two sides, so you will have some points, at least, with respect to which there will be conflicting testimony and it will be your duty as a juror to ascertain what the truth is and, in so doing, it may

be necessary for you to reject the testimony of one witness or reject certain evidence as not being the truth. Would you conscientiously and willing try to ascertain what the truth is from conflicting evidence?

A. Yes.

Q. And Mr. Sullivan has pointed out, of course, that you can't vote for a verdict of guilty of Mrs. Duncan unless I proved by evidence here in court, beyond a reasonable [fol. 584] doubt, that she is guilty. On the other hand, as you have heard, and I think I will ask you now whether you have any quarrel with this proposition, I am not required to prove that she is guilty beyond any doubt whatever, that being an impossible thing to do. You wouldn't require me to go beyond what the law requires in proving the case?

A. No.

Q. Is that right?

A. Yes.

Q. And with respect now to this business of proving the case beyond a reasonable doubt, there are some persons who will say that merely and simply because there is a conflict in the evidence, one witness saying this and the other witness saying that, that automatically that is a reasonable doubt and therefore the person charged is not guilty. You are not one of those, are you?

A. No.

Q. In other words, you wouldn't have any difficult- in attempting to ascertain what the truth is, if there is a conflict in the evidence?

A. No.

Q. That is your job, if you serve as a juror, it will be your duty, to do that, is that right?

A. That is right.

Q. Now, I have already noticed, from what you have said, that you—well, there are many of us that believe [fol. 585] there ought to be changes in the laws. Some of us don't agree in some particulars with some particular rule of law. But would you, whether you agree that it is a wise rule or not, follow whatever rule of law Judge Blackstock tells you to follow?

A. Yes.

Q. Regardless of whether you think it might be better,

that the law might be changed to make it different in some respect, you will take it and accept it as it is today and as Judge Blackstock gives it to you?

A. Yes.

Q. Again I ask you this question, because obviously from your answers you have been thinking a great deal about the whole system of the administration of criminal justice and what can be done to improve it and so on—I want to know whether, if Judge Blackstock tells you this is the law, whether you will follow it, and that is to disregard any sympathy that may be engendered for Mrs. Duncan by the evidence in this case and base your verdict solely on the facts of the case, as developed from the evidence?

A. Yes.

Q. And regardless of what you might think might have been done at some past time or any other sympathetic thing that may come into play in your mind, you will decide the case on the basis of the evidence and the facts alone?

A. Yes.

Mr. Gustafson: Pass for cause.

[fol. 586] The Court: All right, the peremptory is with the People.

Mr. Gustafson: I accept the jury as now constituted.

The Court: The peremptory is now with the defendant.

Mr. Sullivan: The defendant will excuse Mrs. Loretta T. Beall, Juror No. 4.

(The prospective juror was excused.)

The Court: Call another name.

The Clerk: Gary Eugene Tucker, T-u-c-k-e-r.

The Court: Where do you live, Mr. Tucker?

The Prospective Juror: Outside of Ojai, the other side.

The Court: How long have you lived in Ventura County?

The Prospective Juror: Off and on for 25 years.

The Court: Did you ever serve on a criminal case jury?

The Prospective Juror: Never.

The Court: If you should serve on this jury, could you be absolutely fair and impartial to both sides?

The Prospective Juror: Yes, sir.

The Court: All right. Just a moment. Do you have any conscientious scruples against the death penalty?

The Prospective Juror: No, sir.

Mr. Sullivan:

Q. Mr. Tucker, may I inquire as to your business or occupation, please?

A. Pacific Telephone & Telegraph switchman.

Q. And you live in Ojai?

A. Yes, sir.

[fol. 587] Q. And how long have you lived in Ventura County?

A. I left the County a couple of different times during my life but for the most part I have lived here. I was born here.

Q. You left temporarily and returned as this is your home County?

A. Yes, sir.

Q. Well, you know from what you have heard in this courtroom, that my client, Elizabeth Duncan, is charged in this indictment with the murder of one Olga Duncan?

A. I have heard that.

[fol. 588] Q. Is there anything about the nature of that charge that would cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. If the evidence in this case should disclose that Olga Duncan was the daughter-in-law of Elizabeth Duncan, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. If the evidence should disclose that Olga Duncan at the time she came to her death was then pregnant, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. Have you or has any member of your family or anyone near and dear to you ever been the victim of a crime of passion or violence?

A. No, sir.

Q. Or ever had occasion to be a witness against any person charged with a similar offense?

A. No, sir.

Q. Are you acquainted with Mr. Roy Gustafson, the District Attorney of this County?

A. No, sir.

Q. Are you acquainted with any of his deputies or any of the members of his staff?

[fol. 589] A. I know a couple of them, just acquaintances.

Q. I'm sorry?

A. Just speaking acquaintances.

Q. Just speaking acquaintances?

A. Yes.

Q. Well, the fact that you do have a speaking acquaintance with some of the members of Mr. Gustafson's staff, would that have any tendency to influence your verdict in this matter one way or the other?

A. No, sir.

Q. You could act just as fairly and impartially in this matter as though you didn't have that speaking acquaintance; is that correct?

A. Yes, sir.

Q. Have you ever been connected with any law enforcement agency?

A. No, sir.

Q. Has any member of your family or any relative or anyone near and dear to you ever been connected with any law enforcement agency, that you know of?

A. I think my father was a long time ago. It's vague.

Q. It has been so long that you can't remember; is that right?

A. Yes.

Q. And the fact that perhaps years ago your father [fol. 590] was connected in some manner somewhere with law enforcement agency would that have a tendency to cause you to give any greater credence to the testimony of a law enforcement officer if some should testify in this case?

A. No.

Q. Let's assume that some law enforcement officer does testify in this case. Would you be apt to give any greater credence to the testimony of such a witness than you would any other witness?

A. No, sir.

Q. Merely because he happened to be a law enforcement officer?

A. No, sir.

Q. I have got to finish my questions.

A. I thought you were.

Q. You have heard it so many times you knew what I was going to ask; isn't that right?

A. Yes, sir.

Q. You understand that Mrs. Duncan as she sits in this court today is presumed to be innocent of this murder that is charged against her in this indictment, do you not?

A. Yes, sir.

Q. And you further understand from what you have heard that that presumption of innocence accompanies her throughout this entire trial?

[fol. 591] A. Yes, sir.

Q. If you are accepted as a juror in this case, could you accord to her the benefit of that presumption of law?

A. Yes, sir.

Q. And would you do that?

A. Yes, sir.

Q. If you are accepted as a juror in this case, would you require the prosecution to prove to your satisfaction, to a moral certainty and beyond a reasonable doubt the guilt of Elizabeth Duncan of the offense charged in this indictment?

A. Yes, sir.

Q. If after a full and fair consideration of all the evidence in this case in the light of the instructions that will be given to you by His Honor, you honestly and conscientiously entertain a reasonable doubt as to her guilt, would you hesitate to resolve that doubt in her favor and vote for a verdict of not guilty?

A. No, sir.

Q. Would you continue to do that so long as you honestly and conscientiously entertained a reasonable doubt as to her guilt?

A. Yes, sir.

Q. You know from what you have heard that the Court is going to instruct you as to the law applicable to this [fol. 592] particular case?

A. Yes, sir.

Q. Would you be willing to accept that law from His Honor and apply it to the evidence in this case irrespective of whether you thought it was good law or bad law?

A. Yes, sir.

Q. Do you subscribe to any of the local papers?

A. Yes, sir.

Q. Do you sometimes listen to news broadcasts on the radio?

A. No, sir.

Q. Do you ever listen to the news broadcasts on the television?

A. Sometimes.

Q. Have you been a subscriber to the local newspaper or newspapers for quite some time past?

A. About 10 months.

Q. I'm sorry.

A. About 10 months.

Q. About 10 months, so that you certainly were a subscriber then as early as December of last year?

A. Yes, sir.

Q. And still are?

A. Yes, sir.

Q. Have you read anything concerning this case?

[fol. 593] A. At the first in the paper when it first started in December.

Q. Did you read anything in the newspaper which purportedly reported the testimony of witnesses who were called before the grand jury in this matter?

A. No, sir.

Q. Did you read anything in the newspaper which purportedly reported a confession of one Augustine Baldonado?

A. No, sir.

Q. Did you read anything in the newspapers which purportedly reported a confession of one Luis Moya?

A. The caption was all I seen.

Q. Headline?

A. Yes.

Q. From reading those headlines you became aware of the fact that one Luis Moya did make a confession?

A. Yes, but I don't know what he said.

Q. Pardon?

A. I don't know what he said.

Q. You didn't read the article itself?

(The prospective juror shakes head negatively.)

Q. Did you read anything in any newspaper article that you read concerning my client, Elizabeth Duncan?

A. I think I read some. I'm not sure what it was, but some of it. I can't remember what it was.

Q. Well, at least whatever it might have been that [fol. 594] you read, from what you were aware of the fact that was accused of this offense; is that right?

A. No, I heard that in conversation later.

Q. What?

A. I heard that in conversation later.

Q. I see. Then in addition to what you read I take it that you discussed this matter with other people, is that right, or heard it discussed?

A. Discussed it at home, but only mentioned it with other people.

Q. You discussed it with your wife?

A. Yes, sir.

Q. With many other relatives?

A. No, not the facts.

Q. Did your wife discuss the matter with you?

A. Yes, sir.

Q. And then in addition to that it was mentioned among other people?

A. Well, it was—the penalty was mentioned only.

Q. You mean there was some mention as to what the penalty should be in this case?

A. Yes, sir.

Q. Did you read any newspaper article purportedly containing a statement given to the press by Mr. Roy Gustafson?

A. I couldn't say for sure.

Q. Did you hear any discussion or any mention by [fol. 595] any other person purportedly relating a statement by Mr. Gustafson concerning penalty?

A. No.

Q. Have you heard any news broadcasts over the radio concerning this particular case?

A. No, sir.

Q. Have you heard any newscasts on television concerning this case?

A. Not that I remember.

Q. Can you tell me approximately how many people you heard mention this case?

A. Oh, quite a few. I work with an awful lot of people.

Q. Was it a matter of common gossip among your fellow employees?

A. Yes, sir.

Q. The people that you did hear mention this case, you do not know whether they had any personal knowledge with relation to the matters that they talked to you about, do you?

A. Well, as I said, they didn't mention any facts—no.

Q. You say they didn't mention any facts concerning the case?

A. Yes, sir.

Q. The discussion all had to do with penalty?

[fol. 596] A. Yes, sir.

Q. The discussion had to do with what penalty should be imposed?

A. Yes, sir, but I did not agree with them.

Q. Well, from what you heard discussed or from what you did read concerning it, whether it be headlines or subheadlines, whatever it might be, have you, yourself, formed any opinion with respect to the guilt or innocence of Mrs. Duncan?

A. No, sir.

Q. You have never formed any opinion?

A. No.

Q. Concerning her guilt or innocence? As you sit in the jury box here today do you have any opinion whatsoever regarding the guilt or innocence of Mrs. Duncan?

A. No, sir.

Q. As you sit in the jury box here today do you have any opinion concerning penalty in a case of this nature?

A. I haven't thought of any.

Q. Let's assume that your wife was on trial here today and that she was seated at the counsel table here in place of Mrs. Duncan charged with the identical offense charged against Elizabeth Duncan and that her attorney was endeavoring to secure a jury of 12 men and women who

would be absolutely fair and impartial and unbiased and [fol. 597] unprejudiced in any way, who would render an absolutely fair and impartial verdict. Would you be willing to trust the fate of your wife to a jury of 12 men and women of your present frame of mind?

A. Yes, sir.

Q. And you feel that if you did that, you would be satisfied with whatever verdict they might render? When I say, "satisfied," you feel that the verdict rendered would be one that would be absolutely fair and impartial?

A. Definitely.

Q. Do you know of any reason whatever, Mr. Tucker, that you cannot render a fair and impartial verdict in this matter?

A. None whatsoever.

Mr. Sullivan: Pass for cause.

Mr. Gustafson:

Q. Mr. Tucker, you said you discussed the fact of penalty and I thought I heard you say you didn't agree with the other people respecting the death penalty.

A. It wasn't that I didn't agree. I didn't make the decision. It never entered into my mind one way or the other. It's for the courts to decide in things like that and it was not for me.

Q. I see.

A. I had other things to do.

Q. In other words, you neither agreed nor disagreed; [fol. 598] you didn't take any position on it?

A. I believe in a fair trial.

Q. Yes, but I mean you didn't form or express any opinion yourself then as to what the penalty should be based upon what you've read and heard?

A. No, sir.

Q. And you don't come into the jury box with any preconceived notion that a particular penalty should not be applicable in this case?

A. It would depend upon the outcome of the trial and its kind of hard to put in words.

Q. Yes. All right, now, suppose, Mr. Tucker, that you are selected to serve as a juror in this case and you do

serve as a juror and you and the other 11 jurors are convinced beyond a reasonable doubt that the defendant is guilty of first degree murder and you so return a verdict. Then there will be a second phase of the trial wherein additional evidence will be presented with respect to what penalty should be made, and the penalty will not be a matter for the courts, as you said, but for the members of the jury. The jury will decide in its sole discretion whether the defendant gets death in the gas chamber or life imprisonment.

Now, considering that that would be your function, and a very important function and a very serious one, do you entertain any conscientious opinion regarding the death [fol. 599] penalty that would preclude you from voting for it?

A. No, sir.

Q. Do you have any preconceived notions; in other words, any idea in your mind at this time that regardless of whether the death penalty is an appropriate penalty in a particular case, you wouldn't vote it ever if the defendant was a woman?

A. No, sir, it would make no difference.

Q. You don't have that frame of mind?

A. No.

Q. Do you have the frame of mind that would say, "Well, even though a person might be guilty of first degree murder under the law and even though the death penalty might otherwise be appropriate for a person guilty of first degree murder, because of the circumstances of the crime, the background of the defendant, I would never impose that penalty on somebody who didn't personally kill another but who simply encouraged or advised someone else to do the killing"?

A. I can't, but I couldn't figure out the answer—I mean the question.

Q. Well, maybe it is a little complicated question. In other words, what I am trying to get at, Mr. Tucker, is this: that under the law, as the judge will tell you, a person can be guilty of first degree murder even though he didn't personally do some killing.

[fol. 600] A. Right.

Q. He is just as guilty if he aided and encouraged, with criminal intent, somebody else to do the killing.

A. That's right.

Q. And that that makes him guilty of first degree murder as though he had done the killing himself. Now, what I am getting at here is that there are some people who saw, "Well, that is all right so far as first degree murder is concerned. A person can be guilty under the law of that." But when it comes to penalty, some people would say, "I never would impose the death penalty on anybody who didn't personally do the killing." Do you have that frame of mind?

A. No, sir.

Q. In other words, if it is an appropriate case for the death penalty based on the circumstances of the crime and the background of the defendant and all other evidence that you hear, you are not going to refuse to vote it simply because the defendant didn't personally kill someone?

A. That's right.

Q. Now, I assume you do not know Mr. Sullivan, Mr. Frank Duncan and Mrs. Elizabeth Duncan. Is that assumption correct?

A. Yes, sir.

Q. Could you, you think, Mr. Tucker, in deciding [fol. 601] the case follow the Judge's instructions that you are to decide it solely on the basis of the evidence in the case and not on the basis of any sympathy?

A. Yes, sir.

Q. Or passion or prejudice or any other emotion of that kind?

A. Yes, sir.

Q. And do you also feel that the fact that Mr. Sullivan has a person sitting there as his client and I don't have a particular person as my client because it is the People of the State of California, do you feel that despite that situation you could give me just as fair a trial as you could give to the man that has a personal client sitting there?

A. Definitely.

Q. You wouldn't have any prejudices against law enforcement officers?

A. No.

Q. With respect to deciding this case, I think, Mr. Tucker, you probably are aware by now that we may have some conflict in the evidence; that is, one witness saying one thing and a witness on the other side saying the opposite, so that there you have it. You have got a definite conflict. And your duty as a juror is going to be to try to ascertain what the truth is. That is the big job that you people have, is to try to ascertain the truth. Would [fol. 602] you do your best and follow the rules of law laid down by Judge Blackstock as to the manner in which you weigh the testimony of a witness?

A. Yes, sir.

Q. And you would do your best to attempt to resolve these conflicts and to decide what is the truth?

A. Yes, sir.

[fol. 603] Q. Now, Mr. Tucker, again some people say that, well, the prosecution has to prove its case beyond a reasonable doubt. That is true. And they say, well, as long as there are two different stories presented about something, why obviously that is a reasonable doubt, just by the mere fact that there are two stories presented. Are you one of those persons that would say that that automatically entitles the defendant to a verdict of not guilty, just because there is a denial of something?

A. No, sir.

Q. You would then try to resolve the conflict and determine what the truth is and vote accordingly?

A. Yes.

Q. You wouldn't, Mr. Tucker, require me to do the impossible or more than the law requires, by requiring me to prove my case beyond any doubt whatever, would you?

A. No, sir.

Q. Just that I have to prove it beyond a reasonable doubt?

A. Yes, sir.

Q. And if I do that, you wouldn't hesitate, would you, Mr. Tucker; to vote for a verdict of guilty?

A. No, sir.

Q. You wouldn't refuse to vote for a verdict of guilty if you thought that the evidence showed that the defend-

ant was guilty and proved to you her guilt beyond any [fol. 604] reasonable doubt, you wouldn't hesitate to vote for it, because of the consequences that might flow from such a verdict, would you?

A. Would you rephrase that one?

Q. In other words, obviously, as the Judge has said several times, this is a very serious matter. Murder is a serious charge.

A. Yes.

Q. And the consequences that would come from a verdict of guilty, for one thing, would be the imposition of the penalty of life imprisonment or death. Those consequences are serious. You wouldn't hesitate to vote for a verdict of guilty, if you were convinced beyond a reasonable doubt that the defendant was guilty, merely because of the consequences that would be entailed, that would flow, from that verdict?

A. No, sir.

Q. What I am trying to get at is that merely because the duty that you are called upon to perform might be very unpleasant, you wouldn't shirk from it, would you?

A. No.

Mr. Gustafson: Pass for cause.

The Court: All right. The peremptory is with the People.

Mr. Gustafson: I accept the jury as now constituted.

The Court: The peremptory is with the defendant.

Mr. Sullivan: The defendant will excuse Mr. Donald L. Ruggles, Juror No. 9.

[fol. 605] (The prospective juror was excused.)

The Clerk: Vera Lorraine Hall—H-a-l-l. Is that Mrs. Hall?

The Prospective Juror: Miss Hall.

The Court: Miss Hall, you have been here in attendance on the Court for the last few days, haven't you?

The Prospective Juror: Yes, sir.

The Court: And you have heard everything that has been said here?

The Prospective Juror: Yes, sir.

The Court: You know generally what the case is all about?

The Prospective Juror: Yes, sir.

The Court: Do you have any conscientious scruples against the death penalty?

The Prospective Juror: No, I don't, sir.

The Court: If you should serve on this case, would you be absolutely fair and impartial to both sides?

The Prospective Juror: No, sir, I couldn't.

The Court: All right, you may inquire.

Mr. Sullivan:

Q. Miss Hall, did I understand you to say, to tell the Court, that you didn't think that you could be fair and impartial to both sides?

A. No, sir, I am afraid not.

Q. You understand, from what you have heard, that my client, Elizabeth Duncan, is charged in this indictment [fol. 606] with the murder of one Olga Dunca, do you not?

A. Yes, sir.

Q. Is there anything about the nature of the charge itself that would cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir, there isn't.

Q. From what you have heard or read in this courtroom, I take it that you understand that the evidence will probably disclose that Olga Duncan was the daughter-in-law of Elizabeth Duncan?

A. Yes.

Q. Would that fact, if it should be a fact, cause you to entertain any bias or prejudice against Elizabeth Duncan?

A. No.

Q. If the evidence should disclose that Olga Duncan, at the time that she came to her death, was then pregnant, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. (The prospective juror shook her head negatively.)

Q. Have you or has any relative of yours, or anyone near and dear to you, ever been the victim of a crime of passion or violence?

A. No.

Q. Or ever had occasion to be a witness against a person charged with such a crime?

[fol. 607] A. No.

Q. I don't think that I asked you what your occupation was. May I inquire, please?

A. I am a cashier at the Gas Company at the County offices.

Q. Cashier at the Gas Company?

A. Yes, sir.

Q. Have you ever had previous experience as a trial juror in criminal cases?

A. No, I haven't.

Q. Have you ever been connected in any manner with any law enforcement agency?

A. I personally haven't but my brother-in-law is at the present time.

Q. At the present time you have a brother-in-law who is connected with some law enforcement agency?

A. Yes, sir.

Q. May I inquire in what capacity.

A. Well, nearly two years he has been on the Marshal's Department in Oxnard. Before that he was on Security at Point Mugu for several years. Prior to that he was with the Sheriff's Department for six months and, before that, with the Oxnard Police Department, I think, for six or seven years. I can't recall.

Q. He has had quite a few years of experience as a law enforcement officer then?

[fol. 608] A. Yes.

Q. That is your brother-in-law?

A. Yes, sir.

Q. Well, the fact that you do have a brother-in-law who is engaged in law enforcement activities, would that cause you to give any greater credence to the testimony of a law enforcement officer, if one should be a witness in this case?

A. No, sir.

Q. Well, let's assume that a law enforcement officer does testify in this case. Would the mere fact that he is a law enforcement officer cause you to give any greater credence to his testimony than you would to some other witness?

A. No, sir.

Q. You feel that if you were accepted as a juror in this case, that you could keep your mind open until you have heard all of the evidence in this case?

A. If I was on the jury?

Q. Yes.

A. And I had no convictions, I could, but I'm afraid my opinions are quite strong.

Q. I take it then, and maybe we can shorten this a little bit, that you have formed some opinion in your own mind with respect to the guilt or innocence of my client, Elizabeth Duncan, is that correct?

A. Yes, sir.

Q. And the opinion which you have formed in your own [fol. 609] mind is one, I take it, that is adverse to my client, Elizabeth Duncan?

A. Yes, sir.

Q. Your present opinion, as you sit in the jury box today, is that my client Elizabeth Duncan is guilty of this charge, is that it?

A. I am afraid so. There are doubts in my mind.

Q. Have you read something about this case in the newspaper?

A. That is what I have read. My information is from the newspaper.

Q. Did you read anything, read any article in the newspaper which purported to relate the testimony that was taken before the Grand Jury in this matter?

A. Yes, sir.

Q. And did you read any articles in the newspaper which purportedly related to a confession of one Augustine Baldonado?

A. Yes, sir.

Q. And did you read some articles in the newspaper which purportedly related a confession of one Luis Moya?

A. Yes, sir.

Q. Did you read any articles in the newspaper which purportedly related statements concerning this case made by Mr. Roy Gustafson, the District Attorney in this County?

A. I think probably so. I read the newspapers. I [fol. 610] read quite a bit.

Q. And in addition to what you read, you discussed this case with other people?

A. I mentioned it to other people and it was mentioned quite often to me. People around town just mentioned it.

Q. In other words, a lot of people have talked to you about the case or mentioned it to you?

A. They mentioned it occasionally in conversation.

Q. And these people that mentioned the case to you, you don't know whether or not the thing that they said were things that they knew of their own personal knowledge or not?

A. Mostly, in fact I know, that it was mostly newspaper information.

Q. Do you know whether these people that mentioned this case to you or talked to you about it, are likely to become witnesses in this case?

A. No, sir, not that I know of.

Q. You wouldn't know one way or the other about that?

A. No.

Q. Because as you sit in the jury box today, you don't know who the witnesses are going to be, called in this case, do you?

A. No.

Q. Who the witnesses are?

A. No.

Q. Well, the opinion which you now hold, would that [fol. 611] prevent you from acting fairly and impartially as a juror in this case?

A. I'm afraid so.

Q. You feel that the opinion that you now hold would influence your verdict, if you were called upon to act as a juror in this case, is that it?

A. Yes, sir, I'm afraid so.

Q. Let's assume——

Mr. Sullivan: It is after 11:00 o'clock, and the Court will take a brief recess.

Mr. Sullivan: All right, your Honor.

(Recess.)

The Court: All right, the defendant is in court with her counsel, and the prospective jurors that were in the box are still there. You may proceed.

Mr. Sullivan: Thank you, your Honor.

Q. Well, Miss Hall, this opinion which you now hold concerning the guilt of my client, Mrs. Duncan, is it such

an opinion that it would require some evidence on the part of we, the defense in this matter, to overcome?

A. There would have to be some evidence to get the two items out of my mind.

The Reporter: The two items, you say?

The Prospective Juror: Two things.

Mr. Sullivan:

Q. Let's assume that you were seated at the counsel table [fol. 612] here today, charged with this identical offense, and your attorney was endeavoring to secure a jury of 12 men and women who would be absolutely fair and impartial, who would render an unbiased and unprejudiced verdict in the matter. Would you want to be tried before 12 people of your present frame of mind?

A. No, I'm afraid not.

Q. You don't think that you could get a fair and impartial trial at the hands of such a jury?

A. Not the way I feel.

Q. Not the way you feel?

A. No.

Mr. Sullivan: We will challenge this juror for cause.

Mr. Gustafson: I would like to examine, your Honor.

Q. Miss Hall, I don't want you to make any answers here that you don't exactly feel, of course, because if you are legally biased or prejudiced and you are disqualified to sit as a juror, neither the State, nor the defendant nor the Court want that type of juror in the case. But let me say that suppose you have this opinion as you do have, that Mrs. Duncan is guilty, and you have reached that opinion by what you have read in the newspapers, Is that the basis for your opinion?

A. Yes, it is, the things that I read in the newspapers. There are two things that I read in the paper that would put a question in my mind at the present time.

Q. All right. Now, if the Judge tells you that regardless of this opinion that you have that Mrs. Duncan is [fol. 613] guilty, that with respect to voting for a verdict of guilty or not guilty, you must base your verdict not on your opinion and not on anything that you read but on the

evidence presented here in court, could you follow that instruction?

A. So far as the principle of that instruction, I would naturally, as a citizen, follow the law as it stands, but when I was appointed to a jury, I would have to listen to all of the evidence.

Q. And you would have to listen to the instructions of the Judge?

A. That one particular instruction you are asking about?

Q. Yes. So that you could follow his instruction that you must not consider, in reaching a verdict, anything other than the evidence presented in court?

A. Well, yes.

Q. Now, my next question——

Mr. Sullivan: Well, she hasn't finished her answer yet.

Mr. Gustafson:

Q. Yes?

A. Yes, as far as being a citizen and serving on the jury, I think that it is my duty to serve on a jury. If I was picked as a jury member, I would serve according to the rules. I would listen to both sides. With something in my mind probably as strong as it is, I would have to have quite a bit of evidence to override that.

Q. My first question was solely limited to "Could [fol. 614] you follow that instruction that you must base your verdict only on the evidence presented in court and not on anything that you read in the newspaper or heard discussed?"

A. Well, if I was on this jury and in the discussion as far as evidence, I would follow. I would follow. I could. I mean not "would", but "I could."

Q. My second question was going to be, "Would you?" The first question is "Could you?" and the second question is "Would you?" The first question is, "Could you?"

A. I could as a citizen.

Q. Now, would you?

A. I'm afraid I just couldn't do it. I have very strong convictions from what I have read. It is not that I don't believe in a fair trial, but it is just that I——

Q. You feel that it would be impossible for you to per-

form this business of setting aside your opinion and deciding it solely on the basis of the evidence?

A. Yes.

Mr. Gustafson: I do not object to the challenge for cause.

The Court: All right. There is a challenge, isn't there?

The Clerk: Yes, your Honor.

The Court: The challenge is allowed. Call another name.

(The prospective juror was excused.)

The Clerk: Harold—middle name Peyton, P-e-y-t-o-n—[fol. 615] Johnson—J-o-h-n-s-o-n, Harold Peyton Johnson.

The Court: Mr. Johnson, you have been here in attendance on the Court for several days?

The Prospective Juror: Yes, sir.

The Court: And you have heard everything that has been said here?

The Prospective Juror: Yes.

The Court: And you know what the case is all about generally?

The Prospective Juror: Yes.

The Court: Do you have any conscientious scruples against the death penalty?

The Prospective Juror: No, sir.

The Court: Could you try this case fairly and impartially as to both sides, if you should serve on this jury?

The Prospective Juror: I see no reason why I couldn't.

The Court: All right. You may inquire.

Mr. Sullivan:

Q. Mr. Johnson, you live in Santa Paula?

A. Yes, sir.

Q. And how long have you been a resident of Ventura County?

A. Thirty-five years.

Q. May I inquire as to your business or occupation, please.

A. Well, I'm a retired teacher.

Q. Retired teacher. Are you a married man, Mr. [fol. 616] Johnson?

A. Yes, sir.

Q. You have a family, children?

A. Yes, sir.

Q. Well, you know from what you have already heard in this courtroom, that my client, Elizabeth Duncan, is charged in this indictment with the murder of one Olga Duncan, do you not?

A. Yes, sir.

Q. Assuming that the evidence discloses that Olga Duncan was the daughter-in-law of my client, Elizabeth Duncan, would that fact cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. Assume that the evidence should disclose that at the time Olga Duncan came to her death, she was then pregnant. Would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. Have you or has any member of your family or anyone near and dear to you ever been the victim of a crime of passion or violence?

A. No.

Q. Or ever had occasion to be a witness against any person charged with a similar offense?

A. No.

[fol. 617] Q. Have you ever been connected with a law enforcement agency?

A. Well, I have what I would term a very slight connection in a wholly inactive capacity.

Q. With some auxiliary unit?

A. No, not with an auxiliary unit, just a special.

Q. Special?

A. Appointment by the Sheriff as a Special Deputy.

Q. One of those honorary appointments that they make sometimes?

A. Well, call it whatever you want.

Q. Was that made by the Sheriff of this County?

A. Yes, sir.

Q. Well, by reason of that appointment, whatever it may be, would that cause you in any way to give greater credence, let's say, to the testimony of a law enforcement officer, if one should be called as a witness in this case?

A. No.

Q. Would the mere fact that a witness might be a law enforcement officer, would that fact alone cause you to give any greater credence to his testimony?

A. No.

Q. You feel that you could weigh and consider the testimony of such a witness by the same standards as you would that of any other witness that might be called?

A. I see no reason why I couldn't.

[fol. 618] Q. Are you acquainted with Mr. Roy Gustafson, the District Attorney?

A. No.

Q. Are you acquainted with any of the deputies or any members of his staff?

A. Well, not to my knowledge, not knowing who was on the staff.

Q. Well, you are not conscious, as you sit in the jury box today, of being acquainted with anyone?

A. No.

Q. I understand that you don't know what all of your acquaintances do. Well, you realize from what you have heard, that Elizabeth Duncan, as she sits in the courtroom today, is presumed to be innocent of the charge contained in this indictment?

A. Yes.

Q. Do you feel that if you are accepted as a juror in this case, that you could accord to her the benefit of that presumption of law?

A. Yes.

Q. And you feel that if you are accepted as a juror in this case, that you could keep your mind open with respect to the guilt or innocence of Elizabeth Duncan until you have heard all of the evidence in the case?

A. Yes, I do.

Q. Not only the evidence offered by the prosecution [fol. 619] but any testimony presented here on behalf of the defense as well, is that right?

A. Yes.

Q. Let's assume that Elizabeth Duncan should take the witness stand and testify as a witness in her own behalf. Would you be apt to deny her the benefit of her own testimony merely because she happened to be accused of this offense?

A. No.

Q. Do you subscribe to any of the local papers?

A. Just the Santa Paula Chronicle is all.

Q. Do you occasionally listen to news broadcasts on the radio?

A. Well, sometimes, very seldom.

Q. And do you listen to newscasts on television?

A. No, I never listen to them on television. I don't have any television.

Q. Have you ever read anything about this case in the past?

A. Yes. I have read something about it.

Q. Have you heard any radio broadcasts concerning this case?

A. No.

Q. Have you read any articles in any newspaper which reportedly reported the testimony before the Grand Jury in this matter?

A. No, I don't recall reading any.

[fol. 620] Q. Have you read any articles in any newspapers which purportedly reported the confession of one Augustine Baldonado?

A. Yes, I think I have read something that they did.

Q. And do you recall having read any articles in any newspaper which purportedly reported the confession of one Luis Moya?

A. Well, I believe I did at the time.

Q. Did you read any article in any newspaper or publication which, in purportedly reporting a confession of either Baldonado or Moya, wherein it was reported that they had accused my client, Elizabeth Duncan, of participation in this crime?

A. Yes.

Q. In addition to what you read in the newspaper, did you discuss this case with any person?

A. I haven't really discussed it with anybody. It has been mentioned to me by very few people and commented a little bit, but no discussion.

Q. Well, the case has been mentioned to you by other persons then?

A. Yes.

Q. And could you tell me approximately how many other persons mentioned it?

A. Well, not over three or four.

Q. Well, these people that mentioned something about [fol. 621] the case to you, did you have any knowledge as to whether or not they had any personal knowledge of the things they talked to you about concerning this case?

A. I'm quite sure they didn't.

Q. Do you know?

A. Well, I don't know positively.

Q. You couldn't swear to it?

A. No, but I am pretty sure they didn't, because I know them.

Q. Do you know whether these people that mentioned this case to you are likely to be witnesses in this case?

A. I haven't the slightest idea that they would be.

Q. You wouldn't know one way or the other, however?

A. Well, I wouldn't. I have no positive way of knowing.

Q. You don't know who the witnesses are that are going to be called by the District Attorney in this case, do you?

A. No, I haven't paid enough attention.

Q. Well, from what you yourself read concerning this case and from what was mentioned to you concerning it, did you yourself form any opinion with respect to the guilt or innocence of Mrs. Duncan?

A. Well, nothing that was mentioned to me had any bearing on that, but based wholly on what I read in the paper, have read in the paper, I would say that I had [fol. 622] formed some opinion.

Q. Well, the opinion which you formed, was that an opinion that was adverse to my client, Elizabeth Duncan?

A. Yes, I would say it was.

[fol. 623] Q. In other words, you formed some opinion that my client, Elizabeth Duncan, was guilty of this charge?

A. Well, now, I hadn't thought of it in just that way. Now, I had formed—any opinion that I had formed was based only on what I practically read in the paper, and it wasn't any opinion that could not be changed if sufficient evidence warranted it in my mind. Now, if you are talking about the same thing, when you mean that guilt, that is kind of confusing to me. If that's the same thing, why,

the answer would be yes. I hadn't thought about it in that way.

Q. Well, I understood you to say that the opinion which you did form was one that was adverse to Mrs. Duncan.

A. Well, from what I read I could hardly see how it would be anything else, if I formed any at all.

Q. But you did form some kind of an opinion?

A. Well, some kind of idea, yes, sure, slight.

Q. The opinion which you formed wasn't that she was innocent of this charge, was it?

A. Well, no, it couldn't be that.

Q. So, obviously, it must have been one that she was guilty; is that right?

A. Well, I guess that's right.

Q. Did you ever express that opinion to any person?

A. No.

[fol. 624] Q. You talked about this case with your wife?

A. Oh, a little bit.

Q. Did you ever express that opinion to her?

A. Why, I don't think I did. I think she had it already from what she read, perhaps.

Q. She also talked to you about it then; is that right?

A. Well, just a little bit, naturally.

Q. Well, do you still have that same opinion?

A. Well, so long as that opinion—any opinion I have is based only on the information that I had. I haven't had anything so far to change it, so it's still the same.

Q. Obviously, you still have the same opinion?

A. That's right.

Q. Because of the fact that you haven't or heard anything that would cause you to change that opinion; is that right?

A. That's right.

Q. And that opinion is such, I take it, that it would require some evidence on the part of we of the defense to overcome it?

A. Well, it would take evidence that I heard from both sides, would hear from both sides to convince me to change it.

Q. Well, you would require we of the defense to [fol. 625] present some evidence to change it, wouldn't you?

A. Well, I think that there would have to be evidence brought out on both sides.

The Court: Well, Mr. Johnson, you know enough about a criminal case to know that the defendant is not required to prove anything, don't you?

The Prospective Juror: Yes, that's right.

The Court: The law says that the defendant is not required to prove anything. If I tell you or give you the law to that effect, you will follow my instructions, won't you?

The Prospective Juror: Yes, sir.

The Court: You will follow my instructions, all of my instructions about the law?

The Prospective Juror: Yes.

The Court: The jury are the sole and exclusive judges of the weight and the value and the effect of the testimony and of the credibility of the witnesses. The jury have to determine what the facts are. The law is given to you by the court. The defendant is presumed to be innocent until she has been proved to be guilty beyond a reasonable doubt. She doesn't have to prove anything.

The Prospective Juror: That's right.

The Court: If the defendant put on no testimony whatever, but in your opinion the prosecution had failed to prove to you beyond reasonable doubt that she was guilty, [fol. 626] you wouldn't vote for guilt, would you? The prosecution under the law must prove that she is guilty.

The Prospective Juror: Well, only——

The Court: She is presumed to be innocent. Don't you understand that?

The Prospective Juror: Yes, I understand that.

The Court: What?

The Prospective Juror: Yes.

The Court: Well, then you are going to require the prosecution to prove her guilty beyond a reasonable doubt before you will convict her, aren't you?

The Prospective Juror: That's right.

The Court: If they fail to do that, you will acquit her?

The Prospective Juror: That's right.

The Court: Regardless of what you may think about the case now?

The Prospective Juror: That's right.

The Court: Is that right?
The Prospective Juror: Yes.
The Court: All right.

Mr. Sullivan:

Q. Were you going to make some further statement in response to the Court's question a moment ago?
A. I don't believe so.
Q. All right. Let's assume that your wife was seated in [fol. 627] this chair here at the counsel table today charged with the identical offense that is charged against my client, Elizabeth Duncan, and that her attorney was endeavoring to secure for her 12 men and women to try her case who were unbiased and unprejudiced in any manner whatsoever; that he was endeavoring to secure for her a jury of 12 men and women who would render an absolutely fair and impartial verdict. Would you want to trust the fate of your wife to 12 men and women of your present frame of mind?
A. Yes, I would.
Q. You feel that if you did so, that she would receive a fair and impartial verdict at the hands of such a jury?
A. I believe she would.
Q. And that is irrespective of the fact that as you sit in the jury box today you do have an opinion concerning the guilt of Elizabeth Duncan; is that right?
A. Yes.

Mr. Sullivan: I'm going to challenge this juror for cause, Your Honor.
The Court: Well, do you resist the challenge?
Mr. Gustafson: Yes, Your Honor.
The Court: Well, go ahead and question the juror.

Mr. Gustafson:

Q. Mr. Johnson, I think that this matter may be somewhat cleared up, if it hasn't already been so by the judge's [fol. 628] questioning of you, by distinguishing the opinion which you now have from the verdict which you will render after hearing the evidence. In other words, you do now hold an opinion of some kind regarding Mrs. Duncan's guilt; is that correct?

A. Yes.

Q. And, of course, anybody that holds an opinion will retain it until there is something to change that opinion; isn't that right?

A. Yes.

Q. You are no different than anybody else in that respect?

A. That's right.

Q. But if the Judge tells that for the purpose of voting on a verdict you must disregard anything that you have read or heard about the case and disregard any opinion you have gathered outside of the courtroom and base your verdict solely on the evidence as presented in this court and on the instructions given to you by Judge Blackstock, Duncan was guilty, you would vote not guilty, wouldn't you?

A. Yes.

Q. And you could follow it?

A. Yes.

Q. So that theoretically then, Mr. Johnson, this situation hypothetically could occur: That you have the opinion now Mrs. Duncan is guilty. The trial opens and it [fol. 629] turns out that I produce no evidence whatever, or at least any evidence that I produce is completely disbelieved by you; you don't believe a word of it or else I put on no evidence, so that I haven't proved a thing to you, and Mr. Sullivan puts on no evidence, so far as your opinion is concerned it still remains the same, but as to a verdict, I have failed to convince you by evidence produced in court here beyond a reasonable doubt that Mrs. Duncan was guilty, you would vote guilty, wouldn't you?

A. Yes.

Q. Even though your opinion from you previously read remained unaffected?

A. That's right, if it wasn't changed by that evidence.

Q. Yes. Let's assume that it wasn't changed because I didn't produce any evidence; Mr. Sullivan didn't produce any evidence. Your opinion would be the same, but you wouldn't vote guilty because the judge would have told you that you cannot vote guilty unless you are convinced beyond a reasonable doubt of her guilt by evidence produced

in court, so you would vote not guilty on the legal issue presented, wouldn't you?

A. That's right.

Q. In that respect you would follow the law set down by Judge Blackstock in every respect?

A. Yes.

[fol. 630] Q. You could do that?

A. Yes.

Q. And would do that?

A. Yes.

Q. You would act fairly and impartially notwithstanding your opinion; isn't that true?

(The prospective juror nods head affirmatively.)

Q. I think you have already answered Mr. Sullivan's question that with that frame of mind you would be satisfied to be tried by jurors who would follow the law and be fair and impartial in that respect; isn't that true?

A. Yes.

The Court: Challenge disallowed. The peremptory challenge is with the People.

Mr. Gustafson: I don't know that Mr. Sullivan has finished his examination.

Mr. Sullivan: I have no further questions of this prospective juror.

The Court: I understood you passed for cause, didn't you?

Mr. Sullivan: I challenged, but I have no further questions.

The Court: That's right, you challenged him.

Mr. Gustafson: Yes.

The Court: You didn't want to question him any fur-

[fol. 631] ther, did you?

Mr. Sullivan: No, Your Honor.

The Court: If you did, I will let you do it yet.

Mr. Sullivan: No, I have no further questions.

Mr. Gustafson: Then I would like to engage in my examination for cause, Your Honor.

Q. You don't know Mr. Sullivan, Mr. Frank Duncan or Mrs. Elizabeth Duncan?

A. No.

Q. And you realize, I guess, from what has been said that while I have the burden of proving Mrs. Duncan guilty beyond a reasonable doubt, that that means just what it says, and not beyond any doubt whatever, but simply beyond a reasonable doubt?

A. Yes, I understand.

Q. You wouldn't then require me to produce a higher degree or quantity of proof than the law requires?

(Prospective juror shakes head negatively.)

Q. In other words, your individual standard, whatever it might be, would not be applied to this case; you would apply the law to the case as to how much proof I must produce; is that right?

A. That's right.

Q. And knowing the seriousness of the charge brought here, would you go ahead and vote for a verdict of guilty if you were convinced beyond a reasonable doubt [fol. 632] that the defendant was guilty, despite the consequences that might flow from a verdict?

A. Would I vote for it?

Q. Yes, if you were convinced beyond a reasonable doubt.

A. Yes.

Q. (Continuing) That she was guilty? The mere fact that this is the type of verdict that would entail a severe penalty, either life imprisonment or death, that in itself wouldn't cause you not to vote guilty if you were otherwise convinced, would it, Mr. Johnson?

A. No.

Q. And I suppose that similarly, even though some sympathy might be engendered in your mind for Mrs. Duncan after hearing the evidence, I suppose that you would follow the instruction of the Judge that you are to base your verdict solely on the evidence and you are to disregard sympathy, passion, prejudice, and so forth, in arriving at a verdict?

A. That's right?

Q. You would?

A. That's right.

Q. How about this question about the conflict in the evidence? You understand, do you, Mr. Johnson, that we would hardly be here if we all agreed on what the facts

were; that there will be differences in the evidence, no [fol. 633] doubt, with respect to certain facts, and it is your job as a juror to ascertain the true facts from the evidence?

A. Yes.

Q. Would you be willing to attempt to try your best to ascertain those facts on conflicting evidence?

A. Yes, I would have to. I would do the best I could.

Q. The mere fact, standing alone, that there may be two sides to a particular point; in other words, evidence produced by me that such and such is so, evidence produced by Mr. Sullivan saying it isn't so, the mere fact that there is a conflict wouldn't cause you, would it, Mr. Johnson, to throw up your hands and say, "Well, as long as there is a conflict, therefore, the thing can't be proved beyond a reasonable doubt? Therefore, I automatically vote not guilty"?

A. No, I would have to be convinced in my mind beyond a reasonable doubt.

Q. Yes, sure, before you vote guilty, but I am talking now about this other matter. In other words, some time—I don't know whether you can understand my question; perhaps I can make it more clear—sometimes there will be a person who will say, "Well, I never could decide a question where one person says one thing and one person said another. Automatically, so long as one person said one thing and one said another. That, in itself, would [fol. 634] create a reasonable doubt in my mind." Now, you aren't one of those persons, are you?

A. Well, no.

Q. In other words, you would be capable of deciding on the basis of testimony one way and testimony the opposite way, you would be capable of analyzing that evidence and ascertaining which testimony is the testimony you are going to believe?

A. Well, I think I would have to do it that way.

Q. You would have to do it that way?

A. Yes, that's the only way I could do it.

Q. That's right, no other way to do it or else there would never be a determination if you simply said, "There is a conflict and there, there is a doubt." Now, I understood you to say that you did not entertain any conscien-

tious opinion concerning the death penalty which would preclude you from voting for a verdict of guilty of first degree murder, one of the two penalties for which is death?

A. No, I don't have any convictions against it.

Q. All right. Now, consider this then, Mr. Johnson seriously: Are you of the frame of mind whereby you would say that, "Well, you have no convictions generally against the death penalty, but you do have a conviction against applying the death penalty to a person convicted of [fol. 635] first degree murder if that person is a woman?

A. No.

Q. All right. Further, let me ask you whether you have the frame of mind that says, "Well, generally the death penalty is all right, but I would never apply the death penalty to a person convicted of first degree murder, in fact, that person didn't personally do the killing"?

A. No.

Q. It wouldn't cause you, would it, Mr. Johnson, to have more favoritism toward Mr. Sullivan than you would toward me simply because Mr. Sullivan happens to have a person sitting there as his client and I represent an intangible entity called the People of the State of California?

A. No, I wouldn't.

Q. You could give my side of the case just as fair a shake as you would Mr. Sullivan's side? Is that right?

A. Yes.

Q. Do you think of any reason, Mr. Johnson, why you couldn't be a fair and impartial juror in this case?

A. No, I can't think of any.

Mr. Gustafson: Pass for cause.

The Court: You can absolutely fair and impartial [fol. 636] to both sides, could you, if you should serve on this jury?

The Prospective Juror: Well, I would do my best to be impartial. I would be——

The Court: You would do your best. I am willing to assume that, but are you now of the opinion that you will be fair and impartial as to both sides?

The Prospective Juror: Absolutely.

The Court: Well, the challenge is disallowed. The peremptory is with the People.

Mr. Gustafson: I accept the jury as now constituted.

The Court: The peremptory is again with the defendant.

Mr. Sullivan: The defendant will excuse Mr. Floyd B. Spangler, Juror Number Five.

The Clerk: August C. Fowler, F-o-w-l-e-r.

The Court: Mr. Fowler, is it?

The Prospective Juror: Yes, sir.

The Court: You have been in court all the time the last three days, haven't you?

The Prospective Juror: Yes.

The Court: And you have heard everything that has been said here?

The Prospective Juror: Yes, sir.

The Court: So you know generally what this case is all about?

[fol. 637] The Prospective Juror: Yes.

The Court: Do you know of any reason why you couldn't be absolutely fair and impartial to both sides if you should serve on this jury?

The Prospective Juror: No, sir.

The Court: You could decide the case absolutely according to the evidence that you hear here in court and not upon anything else?

The Prospective Juror: That's right.

The Court: Is that right?

The Prospective Juror: Yes.

The Court: Do you have any conscientious scruples against the death penalty?

The Prospective Juror: No, sir.

The Court: You may inquire.

Mr. Sullivan:

Q. Mr. Fowler, may I inquire as to your business or occupation, please?

A. Service station salesman.

Q. Service station salesman?

A. Yes.

Q. You live in Fillmore?

A. Yes, sir.

Q. How long have you resided in Los Angeles County—I mean in Ventura County? I think I am home.

A. Approximately three and a half years.

Q. About three and a half years?

[fol. 638] A. Yes.

Q. Are you married?

A. Yes.

Q. Do you have children?

A. Yes.

Q. You understand from what you have already heard in the courtroom that my client, Elizabeth Duncan, is charged in this indictment with the murder of one Olga Duncan, do you not?

A. Yes.

Q. If the evidence in this case should disclose that Olga Duncan, the alleged victim of this alleged murder, was the daughter-in-law of my client, Elizabeth Duncan, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. If the evidence should disclose that Olga Duncan at the time she came to her death was then pregnant, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. Is there anything about the nature of the charge itself that would cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. Have you or has any member of your family of [fol. 639] anyone near and dear to you ever been the victim of a crime of passion or violence?

A. Yes.

Q. What was that, you, yourself, or some relative?

A. No, it was a sister of mine.

Q. Your sister?

A. Yes.

Q. Was that something that occurred in recent years?

A. In 1942.

Q. '42. Was your sister living at home with you at the time of this occurrence?

A. Yes.

Q. Were you, yourself, called upon to testify in connection with any matter arising out of that incident?

A. No.

Q. Well, as a result of that incident, whatever it might have been, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. And regardless of what that incident may have been and regardless of the unfortunate experience that your sister perhaps went through, you feel that you could decide this case solely and exclusively from the evidence as you hear it in this courtroom?

A. Yes, sir.

[fol. 640] Q. You realize that there are two sides to a lawsuit, don't you?

A. Yes.

Q. You feel that you could keep your mind open with respect to the guilt or innocence of Elizabeth Duncan until you have heard all of the evidence in this case?

A. I do.

Q. That is, not only the evidence offered on behalf of the prosecution, but any testimony that is presented here on behalf of Elizabeth Duncan as well; is that right?

A. Right.

Q. You understand from what you have heard that as Elizabeth Duncan sits in this courtroom today the law clothes her with the presumption of innocence, do you not?

A. Yes.

Q. And that that presumption goes with her throughout this trial?

A. Yes.

Q. If you are accepted as a juror in this case, would you accord to her the benefit of that presumption of the law?

A. Yes.

Q. And if accepted as a juror in this case, would you require the prosecution to prove to your satisfaction, [fol. 641] to a moral certainty and beyond a reasonable doubt the guilt of Elizabeth Duncan of the offense charged in this indictment?

A. Yes.

Q. Let's assume that you are accepted as a juror in this case; that you have heard all of the evidence; that you have received from His Honor the law applicable to

this case; that you have retired to the jury room and you have discussed the evidence with your fellow jurors; you have attempted conscientiously to weigh that evidence in the light of the instructions that will be given to you by the Court; that after a full and fair discussion among your fellow jurors you, yourself, honestly and conscientiously entertain a reasonable doubt as to the guilt of Elizabeth Duncan. Would you hesitate to resolve that doubt in her favor and vote for a verdict of not guilty?

A. No.

[fol. 642] Q. Would you continue to do that, as long as you honestly and conscientiously entertained that reasonable doubt?

A. Yes.

Q. And would you do that, irrespective of how your fellow jurors may feel about that?

A. Yes, sir.

Q. Now, do you subscribe to any local papers, Mr. Johnson?

A. Ventura Star-Free Press.

Q. And have you been a subscriber to that paper for quite some time past?

A. About two years.

Q. Do you ever listen to any news broadcasts on the radio?

A. No.

Q. Do you ever listen to news broadcasts on television?

A. Yes.

Q. Have you in the past read anything about this case?

A. In the beginning I read where Mrs. Duncan was accused of the crime.

Q. Well, you read something about the case?

A. Yes.

Q. In the newspaper, is that right?

A. Yes.

Q. In addition to having read something about it [fol. 643] in the newspaper, did you hear the case talked about or discussed by the people?

A. No, I haven't.

Q. Never at any time?

A. Only with my boss when I was first called to serve here.

Mr. Sullivan: Will you read that back, Mr. Reporter?

(Record read.)

Mr. Sullivan:

Q. You mean that you talked something about it after you were served with a summons to appear as a juror in this case?

A. Yes.

Q. Well, when you were served with the summons to appear as a juror, did you know what case that you were going to be called in to serve on, possibly?

A. No, sir.

Q. What?

A. No, sir.

Q. But you talked about the Duncan case with your boss after you were served?

A. He said that it was possible that it would be this case.

Q. In the newspaper articles, whatever you read about this case, did you read any article which purported to report the testimony that was taken before the Grand Jury in this matter?

[fol. 644] A. No, sir, I did not read that.

Q. You didn't read any article about that?

A. No.

Q. Did you read any article in any newspaper which purportedly reported a confession of one Augustine Baldonado?

A. Only the headlines.

Q. Only the headlines?

A. Yes, sir.

Q. Something about Baldonado confesses?

A. Yes.

Q. But you didn't read the article?

A. No, I did not.

Q. Well, from the headlines that you read, did you know what he confessed to?

A. No, sir, I did not.

Q. Then you do not know whether it applied to this case or not?

A. No.

Q. Did you read any article in any newspaper which purportedly reported a confession by one Luis Moya?

A. Yes. I did not read the article. Again, it was a headline?

Q. Again you only read the headline?

A. Yes.

Q. And from what you read in the headline, did you learn what Moya confessed to?

[fol. 645] A. The crime of murder.

Q. Do you know what crime?

A. Yes, sir. It was the one concerning this case.

Q. Well, did you read any newspaper article purportedly reporting a confession by either Augustine Baldonado or Luis Moya, wherein there was any statement by either one of those men, accusing Olga Duncan of participating in this crime?

A. No.

Mr. Gustafson: I think you meant Elizabeth Duncan.

Mr. Sullivan: Elizabeth Duncan. I meant Elizabeth.

Q. I will change it to Elizabeth. Is your answer the same?

A. Yes.

Q. So that you never read any article in any newspaper where you saw the name "Elizabeth Duncan" mentioned?

A. Not that I recall.

Q. And you never heard the name Elizabeth Duncan mentioned until after you were served with a summons to appear as a juror in this case, is that right?

A. Oh, yes, I heard the name mentioned.

Q. Then you heard something or other discussed about this case, didn't you?

A. No. The only connection that I have with her name is that she was connected with the case.

Q. Where did you learn that?

A. From the newspapers, I guess. I didn't read the [fol. 646] articles fully.

Q. Well, from the newspaper you learned that Elizabeth Duncan was connected with this case in some manner?

A. Yes, sir.

Q. Was that in the headlines, that you read it?

A. I believe it was.

Q. Well, did you discuss that with anybody?

A. Not to my knowledge.

Q. You have no independent recollection of having discussed it with any person, is that right?

A. That is right.

Q. Well, from what you read, whatever it might have been concerning this particular case, did you yourself form any opinion with respect to the guilt or innocence of Elizabeth Duncan?

A. No, I did not.

Q. Never at any time?

A. No.

Q. Do you now, as you sit in this jury box today, entertain any opinion with respect to her guilt or innocence of the crime charged in this indictment?

A. I do not.

Q. Well, let's assume that your wife was on trial here today, charged with the identical offense that is charged against Elizabeth Duncan, and let's assume that I am representing your wife as her attorney and that we were [fol. 647] endeavoring to secure for her a jury composed of 12 men and women who wou'l be absolutely fair and impartial, unbiased and unprejudiced in any manner, who would render a fair and impartial verdict. Would you be willing to trust the fate of your wife to 12 men and women of your present frame of mind?

A. I would.

Q. Do you know of any reason whatsoever why you could not act fairly and impartially in this matter?

A. I do not.

Mr. Sullivan: We will pass for cause, your Honor.

The Court: Well, it is after 12:00 o'clock. I think we better adjourn. It will be too late if we don't. We adjourn until 1:45, ladies and gentlemen. You are excused until 1:45.

(Whereupon, at 12:02 o'clock P.M., the Court recessed proceedings until 1:45 o'clock P.M.)

[fol. 648] Ventura, California, February 19, 1959; 1:45 P.M.

The Court: Mr. Franco.

Prospective Juror Franco: Yes, sir.

The Court: By stipulation of the attorneys you are excused. Call another name.

(Prospective juror excused.)

Mr. Gustafson: Let the record show I so stipulated.

Mr. Sullivan: Yes.

The Court: Yes. That's right, isn't it, Mr. Sullivan, you stipulate?

Mr. Sullivan: Yes, Your Honor.

The Clerk: Trini "B" Sawyers, S-a-w-y-e-r-s.

It is Mrs. Sawyers.

The Court: Is it Mrs. Sawyers?

The Prospective Juror: That's right.

The Court: You have been here in the courtroom the last few days?

The Prospective Juror: Yes, sir.

The Court: And you have heard everything that has been said here?

The Prospective Juror: Yes, sir.

The Court: So you know what this case is all about; you know that this defendant here, Elizabeth Duncan, is charged with murder?

[fol. 649] The Prospective Juror: Yes, sir.

The Court: And do you have any conscientious scruples against the death penalty?

The Prospective Juror: Yes, sir, I do.

Mr. Gustafson: Challenge the juror for cause.

The Court: All right, the challenge is allowed. Call another name.

The Clerk: Ruby "L" Menges, M-e-n-g-e-s.

The Court: Is it Mrs. or Miss?

The Prospective Juror: Mrs.

The Court: Mrs.?

The Prospective Juror: Yes.

The Court: Menges?

The Prospective Juror: Menges.

The Court: You have been in the courtroom here several days, have you not?

The Prospective Juror: Yes, sir.
The Court: Do you know what this case is all about?
The Prospective Juror: Yes, sir.
The Court: Do you have any conscientious scruples against the death penalty?
The Prospective Juror: Yes, I do.
The Court: You do?
The Prospective Juror: Yes, I do.
Mr. Gustafson: Challenge for cause.
The Court: You are excused. Call another juror.
[fol. 650] The Clerk: Isabell C. Hart, H-a-r-t.
The Court: Is it Mrs. Hart?
The Prospective Juror: Yes.
The Court: Do you have any conscientious scruples against the death penalty?
The Prospective Juror: Yes I do.
The Court: What?
The Prospective Juror: I do.
Mr. Gustafson: Challenge for cause.
The Court: You are excused.
The Clerk: Anthony Bollero, B-o-l-l-e-r-o.
The Court: Mr. Bollero, you live here in Ventura, do you not?
The Prospective Juror: Yes, sir.
The Court: Do you have any conscientious scruples against the death penalty?
The Prospective Juror: Yes.
Mr. Gustafson: Challenge for cause.
The Court: All right, you are excused.
The Clerk: Hans Gramckow, G-r-a-m-c-k-o-w.
Do I pronounce that correctly?
The Prospective Juror: Gramckow is the name.
The Clerk: Gramckow.
The Court: How do you pronounce your name?
The Prospective Juror: Gramckow, sir.
The Court: Gramckow?
[fol. 651] The Prospective Juror: That's right.
The Court: Where do you live?
The Prospective Juror: In Ventura.
The Court: How long have you lived in Ventura County?
The Prospective Juror: Thirty years.

The Court: Do you have any conscientious scruples against the death penalty?

The Prospective Juror: No, sir.

The Court: All right, do you think you give this defendant a fair and impartial trial if you should serve on this jury?

The Prospective Juror: I do.

The Court: You may inquire.

Mr. Sullivan: You haven't examined Mr. Fowler, have you? I had just finished my voir dire examination of Mr. Fowler at the noon recess. Do you want to examine him before I examine Mr. Gramckow?

Mr. Gustafson: Yes.

Q. Mr. Fowler, do you have any conscientious opinion regarding the death penalty which would preclude you from voting for a verdict of guilty of first degree murder, one of the penalties of which might be the death penalty?

A. No, sir.

Q. And do you have any opinion regarding the death penalty that would cause you to say that in no event would it be applicable to a woman?

[fol. 652] A. No, sir.

Q. Anything that would cause you to say that it should never be applied to a person who did not personally do the killing?

A. No, sir.

Q. Do you know any reason why you couldn't serve as a fair and impartial juror in this case?

A. None whatsoever.

Mr. Gustafson: Pass for cause.

Mr. Sullivan:

Q. Mr. Gramckow——

Mr. Gustafson: I think, Mr. Sullivan, that having passed for cause, there is a peremptory.

Mr. Sullivan: Oh, that's right. Excuse me.

The Court: The peremptory is with the People.

Mr. Gustafson: I will excuse Mr. Fowler.

(Prospective juror is excused.)

The Court: Do you want to examine Mr. Gramckow now?

Mr. Sullivan: All right, Your Honor.

Mr. Gustafson; I think we should have——

The Clerk: Charles D. Bushman, B-u-s-h-m-a-n.

The Court: Where do you live, Mr. Bushman?

The Prospective Juror: In Ojai.

The Court: How long have you lived in this County?

The Prospective Juror: Two years, eight months.

The Court: Have you ever served on a jury in a criminal case?

[fol. 653] The Prospective Juror: No, sir.

The Court: Any place?

The Prospective Juror: No, sir.

The Court: You have been here all the time for several days, have you not?

The Prospective Juror: Yes, sir.

The Court: And you know what the case is all about?

The Prospective Juror: Yes.

The Court: Do you have any conscigntious scruples against the death penalty?

The Prospective Juror: No, sir.

The Court: Go ahead.

Mr. Gustafson: By stipulation of counsel, counsel apparently will examine Mr. Gramckow first.

The Court: All right.

[fol. 654] Mr. Sullivan:

Q. Mr. Gramckow, may I inquire as to your business or occupation, please.

A. I am employed by a local oil company.

Q. Are you married, Mr. Gramckow?

A. No.

Q. Do you have a family, children?

A. Yes.

Q. You understand from what you have already heard, that Elizabeth Duncan is charged in this indictment with the murder of one Olga Duncan, do you not?

A. I do.

Q. And if the evidence in this case should disclose that Olga Duncan was the daughter-in-law of Elizabeth Duncan,

would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. If the evidence should disclose that Olga Duncan at the time that she came to her death was then pregnant, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, it wouldn't.

Q. Is there anything about the nature of this charge that would cause you to entertain any bias or prejudice against her?

A. No.

Q. Have you or has any member of your family or [fol. 655] anyone near and dear to you ever been the victim of a crime of passion or assault?

A. No, sir.

Q. Or ever had occasion to be a witness against any person charged with such a crime?

A. No, sir.

Q. Are you acquainted with Mr. Gustafson, the District Attorney in this County?

A. No, I am not.

Q. Are you acquainted with any of the deputies in his office or members of his staff?

A. If I am, I don't know about it.

Q. At least you are not conscious of any person that you know that is connected with his staff. Have you ever been connected in any way with any law enforcement agency?

A. No, I have not.

Q. Has any relative of yours or any member of your family or anyone near and dear to you been connected with any law enforcement agency?

A. No, sir.

Q. Assuming that a law enforcement officer should testify as a witness in this case. Would you be apt to give any greater credence to the testimony of such a witness merely because he happens to be a law enforcement officer than you would to that of any other witness?

A. No, I would not.

[fol. 656] Q. Do you feel that you could weigh and con-

sider the testimony of such a witness on the same standards as you would that of any other witness in this case?

A. Yes, sir.

Q. You understand, do you not, that the law presumes that Mrs. Duncan is innocent of the charge contained in this indictment?

A. She is presumed to be innocent?

Q. Yes.

A. That is right.

Q. And you feel that if you are accepted as a juror in this case, that you could give to her the benefit of that presumption of the law?

A. I could.

Q. Would you require the prosecution to prove to your satisfaction, to a moral certainty and beyond a reasonable doubt, her guilt of the charges contained in this indictment?

A. Yes, I would expect it.

Q. And if, after a full consideration of all of the evidence and in light of the instructions as given to you by the Court, you yourself entertained a reasonable doubt as to her guilt, would you hesitate to resolve that doubt in her favor and vote for a verdict of not guilty?

A. I would vote for such a verdict.

Q. And would you continue to do that as long as you did conscientiously entertain a reasonable doubt as to her [fol. 657] guilt?

A. Yes.

Q. Would you do that irrespective of how your fellow jurors may feel about the matter?

A. I would.

Q. Mr. Gramckow, do you subscribe to any of the local papers?

A. I do.

Q. Do you ever listen to news broadcasts on the radio?

A. Very seldom.

Q. Do you listen to news broadcasts on television?

A. Occasionally.

Q. Have you been a subscriber to one of the local papers for some time?

A. Many years.

Q. Many years. Have you in the past read anything about this case?

A. Yes, I have.

Q. Do you recall whether you read anything in any newspaper which purported to report the testimony of witnesses who were called before the Grand Jury in this matter?

A. I seem to recall something to that effect. I wouldn't recall the details.

Q. You recall whether or not you read anything about this case which purported to report a confession of one [fol. 658] Augustine Baldonado?

A. I also recall something about that, yes, sir.

Q. And do you recall having read anything in any newspaper which purportedly reported a confession of one Luis Moya?

A. The answer is the same. Yes, I do recall something.

Q. And you recall having read anything in any newspaper concerning either one of those alleged confessions, wherein there was any statement made that they or either one of them had accused Elizabeth Duncan of participation in this matter?

A. Yes, I do recall something to that effect.

Q. In addition to what you read concerning this case, have you discussed it with anyone?

A. I have refrained from discussion. I have heard other people discuss it but I haven't really participated.

Q. I see. But you have heard other people discuss the case?

A. Yes.

Q. And you have heard many people discuss it?

A. Oh, possibly six or eight.

Q. Six or eight people discuss it. Do you know whether or not the people whom you heard discuss this matter had any personal knowledge of the matters that you heard them discuss?

A. I doubt it. I don't think so.

[fol. 659] Q. You don't know for sure?

A. I wouldn't know for sure.

Q. Do you know whether or not any of those persons whom you heard discuss this case will be called as witnesses in this matter?

A. I would not know that for sure, either.

Q. Well, as a result of what you read, or what you heard concerning this case, did you yourself form any opinion with respect to the guilt or innocence of Mrs. Duncan?

A. No, sir, I have not formed any opinion.

Q. As you sit in the jury box today, do you have any opinion whatsoever concerning her guilt or innocence?

A. I have not.

Q. Well, let's assume that your wife were on trial here today, charged with this identical offense, and all you wanted her to have was a trial before a jury composed of 12 men and women who were absolutely unbiased and unprejudiced, who you wanted to return a fair and impartial verdict. Would you be satisfied to rest her fate in the hands of 12 people of your present frame of mind?

A. I would.

Q. Do you know of any reason whatsoever why you could not give to Mrs. Duncan a fair and impartial trial?

A. I do not.

Mr. Sullivan: Thank you, Mr. Gramckow. Pass for cause.

Mr. Gustafson:

[fol. 660] Q. Mr. Gramckow, you have heard the questions that I have previously asked of other prospective members of the jury?

A. I have.

Q. Would your answers be any different than those of the answers of the 11 other persons sitting in the jury box?

A. I don't think so, no.

Q. Well, suppose we cover a few of them, at least. Would you impose upon me any greater burden in proving of my case than the law requires; namely, proof beyond a reasonable doubt? You wouldn't require me, would you, to prove the case beyond any doubt whatever, would you?

A. No, sir.

Q. And you wouldn't be of the frame of mind, Mr. Gramckow, that merely because there might be some conflicts in the testimony, that automatically that would cause a reasonable doubt in your mind, would you?

A. No, I wouldn't.

Q. You would do your best as a juror to resolve those conflicts, to decide the questions of fact, and to ascertain what the truth is?

A. I would.

Q. And there would be no hesitancy on your part, simply because of the serious consequences that might flow from a verdict of guilty, from voting for such a verdict, if in fact you were convinced beyond a reasonable doubt that the defendant was guilty?

[fol. 661] A. I didn't follow the first part of your question.

Q. I see. There would be no hesitancy on your part, would there to vote for a verdict of guilty, if you were convinced beyond a reasonable doubt that the defendant was guilty?

A. No, there would not.

Q. Now, in considering the case, would you follow the instruction of Judge Blackstock that you are to decide the case solely on the basis of the evidence presented here in court?

A. I definitely would.

Q. And would you put aside any sympathy or other emotions that might be aroused in you during the course of this case and decide it solely on the evidence?

A. I would do that.

Q. Now with respect to the death penalty, I understand that you do not have any conscientious opinion concerning it which would preclude you from voting for a verdict of guilty of first degree murder which carries with it as one of the two alternative penalties, the death penalty?

A. No, sir.

Q. And do you have in your mind at the present time any kind of mental reservation that a person who would otherwise in your judgment deserve the death penalty, should not get it because the person is a woman?

A. No, sir.

Q. Do you have in your mind any reservation about [fol. 662] the application of the death penalty to a person who is guilty of first degree murder but who did not personally do the killing?

A. No.

Q. Can you think of any reason, Mr. Gramckow, why you couldn't be fair to my side of the case?

A. I want to be fair to both sides.

Q. Yes. You would be fair, as I understand it; in your statement before you said to Mr. Sullivan you would be fair and impartial to both sides. Is that it?

A. That is right.

Mr. Gustafson: Pass for cause.

The Court: All right, the peremptory is now with the defendant.

Mr. Gustafson: Your Honor, I believe that in the light of the fact that there are two jurors who came in since the exercise of the last peremptory, that Mr. Sullivan is entitled to have the other juror examined for cause before he is required to exercise a peremptory challenge.

The Court: He is, if he wants to do it.

Mr. Sullivan: I would prefer to examine him before we proceed with any additional challenges, your Honor.

The Court: All right.

Mr. Sullivan: Thank you, your Honor.

Q. Mr. Bushman, I think you indicated that you had been living in Ventura County for about two years and eight [fol. 663] months, something like that?

A. Yes.

Q. May I inquire as to your business or occupation?

A. I am a carpenter.

Q. Well, you know from what you have heard in the last few days in this courtroom, that Mrs. Duncan is charged in this indictment with the murder of one Olga Duncan, do you not?

A. Yes, sir.

Q. Is there anything about the nature of that charge that would cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. Assuming that the evidence in this case discloses that Olga Duncan was the daughter-in-law of Elizabeth Duncan, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. Assuming that the evidence discloses that Olga Dun-

can at the time she came to her death was then pregnant. Would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. Have you or has any member of your family or anyone near and dear to you ever been the victim of a crime of passion or assault?

[fol. 664] A. Yes.

Q. Was that you yourself?

A. No.

Q. Some relative of yours?

A. Yes.

Q. And how close a relative was that?

A. My sister.

Q. Your sister. And was that something of recent occurrence or something that happened some years ago?

A. About 18 years ago.

Q. About 18 years ago. Well, would the fact that your sister had been the victim of some crime of passion—I assume that is what it is—would that cause you in any manner to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. That unfortunate experience that your sister went through, would not in any way influence your verdict if you were to sit as a juror in this case, is that correct?

A. That is correct.

Q. Have you ever been connected with any law enforcement agency?

A. No.

Q. Has any relative of yours, anyone near and dear to you, ever been connected with any law enforcement agency that you know of?

A. Well, an ex-relative. My sister's first husband [fols. 665-666] was a Deputy Sheriff.

[fol. 667] Q. Was that in this county?

A. No, sir.

Q. Is he still a Deputy Sheriff?

A. To my knowledge, yes.

Q. To your knowledge he is. Well, there might be some Deputy Sheriffs testify as witnesses in this case. Would the fact that you have a brother-in-law who was or still

is a Deputy Sheriff, would that cause you to give any greater credence to the testimony of a Deputy Sheriff if one should testify in this case?

A. No.

Q. Would you give any more credence to the testimony of a law enforcement officer than you would that of any other witness merely because he happened to be a law enforcement officer?

A. No.

Q. You feel that you could weigh and consider the testimony of such a witness by the same standards as you would of any other witness in this case?

A. Yes, sir.

Q. Assuming that Mrs. Duncan should take the witness stand and testify as a witness in her own behalf, would you be apt to deny to her the benefit of her own testimony merely because she happens to be charged with this offense?

A. I couldn't deny the entire benefit of her testimony, but I certainly couldn't allow it as credible the [fol. 668] same as I would any other witness.

Q. You would measure her testimony by a different standard?

A. Yes, sir.

Q. Do you have some preconceived notion that because she happens to be the defendant in this case she is not so apt to tell the truth?

A. Yes, I do.

Q. You understand from what you have heard that as she sits in court today she is clothed with the presumption of innocence?

A. Yes, sir.

Q. In other words, the law presumes that she is innocent of this charge of murder.

A. Yes.

Q. Do you think that if you were called upon to act as a juror in this case, that you could accord to her the benefit of that presumption which the law gives to her?

A. Yes.

Q. If you were called upon to act as a juror in this case, would you require the prosecution to prove to your satis-

faction, to a moral certainty and beyond a reasonable doubt the guilt of Mrs. Duncan?

A. Yes.

Q. If the prosecution failed to do that and you had a reasonable doubt as to her guilt, would you hesitate [fol. 669] to resolve that doubt in her favor and vote for a verdict of not guilty?

A. No.

Q. Would you be willing to do that irrespective of how your fellow jurors may feel about the matter?

A. Yes.

Q. Do you subscribe to any of the local papers?

A. The Ojai paper.

Q. And do you sometimes listen to news broadcasts on radio?

A. Yes.

Q. And sometimes listen to news broadcasts on television?

A. Yes.

Q. Have you been subscribing to this paper for some time past?

A. Yes.

Q. As far back as November-December of last year?

A. Yes.

Q. Have you read anything about this case in any newspaper?

A. Not since the original headlines which told of the murder itself.

Q. Not since the original headlines?

A. That is true.

Q. Did you read something more than just the [fol. 670] original headlines?

A. Yes, I read the first account of the murder which was in the paper.

Q. I see. Did you read any item in any newspaper which purported to report the testimony of witnesses who were called before the grand jury in this matter?

A. No.

Q. Did you read any account in any newspaper which purportedly reported the confession of one Augustine Baldonado?

A. No, sir.

Q. Did you read any account in any newspaper which purportedly reported the confession of one Luis Moya?

A. No.

Q. Did you hear any radio broadcasts which purportedly reported the confession of one Luis Moya?

A. No.

Q. Have you heard any radio broadcasts concerning this case?

A. Not that I can specifically recall.

Q. Well, in addition to what you originally read concerning this matter, have you discussed this case with any person or persons?

A. No. I have heard discussions, but I have expressed no opinion in any discussion.

Q. You have heard other people discussing it?

A. Yes.

[fol. 671] Q. But you, yourself, did not participate in the discussion; is that it?

A. No, sir.

Q. Well, did you hear many other people discuss it?

A. No.

Q. Could you tell me approximately how many?

A. Just three or four or five.

Q. These people that you heard discuss it, did you believe that what they said about this case was the truth?

A. To the best of their knowledge, yes.

Q. Did you believe it was the truth?

A. No. I have no opinion.

Q. You didn't come to any conclusion about that; is that it?

A. That is true.

Q. Did you have any reason to disbelieve them?

A. No, sir.

Q. Do you know whether or not any of those persons had any personal knowledge of the matter that you heard them discuss?

A. No.

Q. Do you know whether or not any of those persons are likely to be called as witnesses in this case?

A. No.

[fol. 672] Q. From what you read concerning this case and what you heard other people discuss concerning it,

did you, yourself, form any opinion with respect to the guilt or innocence of Mrs. Duncan?

A. No.

Q. As you sit in the jury box here today do you have any opinion concerning her guilt or innocence.

A. No.

Q. Let's assume that your wife were on trial here today charged with the identical offense that Mrs. Duncan is accused of. You wanted her to have a trial at the hands of 12 men and women who were absolutely unbiased and unprejudiced and who would render a fair and impartial verdict. Would you be willing to trust the fate of your wife in the hands of 12 people of your present frame of mind?

A. Yes, sir.

Q. You feel that if you did that, that she would receive a fair and impartial trial; is that correct?

A. Yes.

Q. Let's go back for just a moment to this matter of your opinion concerning Mrs. Duncan as a witness in her own behalf. You don't think that you could accord to her the full benefit of her own testimony; is that it?

A. That is true.

Q. Is that simply because she happens to be [fol. 673] charged with this offense?

A. Yes, sir.

Q. Would you feel that way about any person charged with a crime?

A. Why, certainly.

Q. You have a preconceived notion then that any person who is charged with a crime is likely to go on the witness stand and not tell the truth; is that it?

A. No, sir. This isn't "any" crime; this is a murder. She has nothing to lose by any statement she might make. I don't think that I should be required to assume that anything she says will be bound to the truth merely because she would be under oath. Her life certainly is at stake.

Q. Do you think then that she has too much at stake to tell the truth on the witness stand?

A. Not necessarily. If she is innocent, why, she could tell the truth and the District Attorney could hardly convince here—convince us that she was guilty, but on the

other hand, she doesn't have anything to lose such as any other witness would. If I lied under oath, I would be guilty of perjury, but that certainly shouldn't bother her.

Q. Have you read or heard anything concerning any other charges that have been made against Mrs. Duncan?

A. I have heard, yes.

[fol. 674] Q. Something concerning other charges that have been filed against here?

A. Yes, sir.

Q. Did you form any opinion in your own mind from what you heard about the other charges as to whether or not she was guilty of that?

A. No, sir, only except that her character certainly seems to be in some question, more so than that of any other witness, wouldn't you say?

Q. At least it is in your mind, isn't it?

A. Yes, sir.

Q. Don't you think that that is going to kind of prevent you from acting fairly and impartially in this matter?

A. If being fair and impartial would require that I accept her word as completely valid, yes, sir.

Mr. Sullivan: I am going to challenge this witness for cause, Your Honor.

Mr. Gustafson: Your Honor, I would like to examine the witness.

Mr. Sullivan: I mean this juror. I lead you into the error.

Mr. Gustafson: Yes.

Q. Mr. Bushman, you would follow the instructions of the Judge, would you not?

A. Yes, sir.

Q. And if the Judge tells you that there are cer-[fol. 675] tain things which you may take into consideration in determining whether to believe or not to believe a particular witness, you will take those things into consideration, will you not?

A. Yes, sir.

Q. And if he tells you that some of the things you may consider are the manner in which the witness testifies, the demeanor of the witness on the witness stand, whether or

not the witness has made prior conflicting statements, whether the witness has been convicted of a felony, and other factors of that nature, then you would take those into consideration in judging the testimony, would you not?

A. Yes, sir.

Q. And if the Judge tells you that one of the things you may take into consideration in determining whether a witness is telling the truth is the interest of the witness in the case, then you would follow that, too, would you not?

A. Yes, sir.

Q. And is it not true, Mr. Bushman, that all you mean to say with respect to these questions that you were answering for Mr. Sullivan is that you will consider as one of the factors in judging the testimony of Mrs. Duncan, if she takes the stand, is her interest in the case as a defendant?

A. Yes, sir.

[fol. 676] Q. That is all you are saying, is it not?

A. Yes.

Mr. Gustafson: I submit the juror is not disqualified and, Your Honor, I point out again that I think that is the vice in the question asked by Mr. Sullivan about giving the defendant the full benefit of her testimony, because it's an unintelligible question and it doesn't take into consideration the factor that the juror may consider any witness' interest in the case, and that is why I objected to the question the first day and thereafter.

The only pertinent question is whether the jurors will judge the testimony of the defendant by the same rules as the testimony of any other witness.

The Court: You understand that, Mr. Bushman?

The Prospective Juror: Yes, sir.

The Court: Every witness is judged by the same standard or rule. Every witness is presumed to tell the truth, but it is up to the jury to determine whether or not the witness is telling the truth. You take into consideration all these things that the District Attorney has just enumerated to you in determining whether she is telling the truth, but she is presumed to tell the truth. That is not a conclusive presumption; that doesn't mean that she is absolutely telling the truth, but it is a legal presumption

she starts with. She is presumed to tell the truth, but it is up to you as a juror to determine in your own mind [fols. 677-678] whether she is telling the truth or not. You understand that, don't you?

The Prospective Juror: Yes, sir.

The Court: You have to give her the same benefit of the same presumption that you give to every witness. You understand that?

The Prospective Juror: Yes, sir.

The Court: You can't start out by assuming, well, she is the defendant and, therefore, she is not telling the truth. You can't do that. You wouldn't do that, would you?

The Prospective Juror: No, sir.

The Court: You wouldn't just simply say, "Well, here, this is the defendant. I know she is not telling the truth." The presumption is that she is telling the truth. You wait until she testifies and then after she gets through testifying, you apply this standard, these different rules, make up your mind whether she is telling the truth or not, the matter of her testimony, her demeanor on the witness stand, and you tell in that way whether she is telling the truth or not, or whether she contradicts herself in different particulars, and so forth, and you make up your mind about it. You simply don't assume that she is not telling the truth because she is the defendant. Would you do that?

The Prospective Juror: No, sir. His specific question was whether or not I would grant to her the same credence [fol. 679] that I would to any other witness without any regard for the circumstances of her testimony.

Mr. Gustafson: I agree, Your Honor, that that is exactly the import of Mr. Sullivan's question that he is asking, and I say that that is why it is an erroneous question, because the juror is entitled to take into consideration the interest of any witness, and if the defendant is a witness, the juror is entitled to consider that the person has an interest as the defendant in the case.

That's all Mr. Bushman is saying.

The Prospective Juror: That is precisely my point.

The Court: He asked her if you would give her the same credence. You would give her the same credence, wouldn't you? That dosn't mean that you're going to believe what

she says, but you would give her the benefit of all of the rules of evidence the same as you would give to any other witness, wouldn't you?

The Prospective Juror: Yes, sir.

The Court: And you might believe her and you might not believe her after you apply these rules, but you would give the benefit of those rules, wouldn't you?

The Prospective Juror: Yes, sir.

The Court: The challenge is disallowed.

Mr. Sullivan:

Q. Would you presume that she is telling the truth?

A. Yes, sir.

[fol. 680] Q. Would you weigh her testimony by the same standards as you would that of every other witness?

A. Yes, sir.

Mr. Sullivan: I have no further questions.

The Court: The challenge is disallowed.

Mr. Gustafson:

Q. Mr. Bushman, with respect to the burden of proof in this case that you heard about, you understand that I bear the burden or producing evidence before you in court here proving to your satisfaction beyond a reasonable doubt that the defendant is guilty before you are entitled to vote guilty?

A. Yes, sir.

Q. You wouldn't require me, Mr. Bushman, to do any more than that, would you, to prove her guilty beyond any doubt whatever?

A. No, sir.

Q. And you would, as I understand it, base your verdict solely on the evidence presented here?

A. Yes, sir.

Q. And the instructions as given to you by Judge Blackstock?

A. Yes.

Q. Whether you agreed with those rules of law or not, is that right, Mr. Bushman?

A. Yes, sir.

Q. With respect to the penalty, I understood you

[fol. 681] to say that you did not have any conscientious opinion regarding the death penalty which would preclude you from or keep you from voting for guilty, a verdict of guilty of first degree murder which carried with it as one of two alternatives, the death penalty?

A. No.

[fol. 682] Q. And there is no such objection on your part?

A. No.

Q. And do you have in your mind any reservation that would say that, well, while you are not conscientiously opposed to the death penalty, in general, you would never apply it to a woman?

A. No.

Q. Do you have any reservations in your mind that would say that while you have no general opposition to it, you would never apply it to a person who did not personally commit the killing?

A. No.

Q. Do you know of any reason why you couldn't be a fair and impartial juror?

A. No.

Mr. Gustafson: Pass for cause.

The Court: All right, the peremptory is with the defendant.

Mr. Sullivan: Your Honor, before exercise another peremptory challenge, the Court indicated that you would permit me to ask a few other questions of Mrs. Wilms, Juror No. 6.

The Court: All right.

Mr. Sullivan: May I do that first?

The Court: All right.

Mr. Gustafson: May I ask—well, withdraw that.

Mr. Sullivan: Mrs. Ruggles, I just want—or Mrs. Wilms [fol. 683] —I just wanted to ask you a few more questions with the Court's permission. Have you discussed this case at all since you have been in the jury box with any person?

A. Just in regards to the picking of the jurors perhaps.

Q. What?

A. Just maybe speculation, who was going to go up next, or something like that.

Q. Did you have any discussion with anyone of the men

who was in the jury box here yesterday and this morning by the name of Ruggles?

A. I sat next to Mr. Ruggles the first day of jury, having lunch, but I did not discuss the case.

Q. Did he say something to you about this case?

A. What do you mean? Pertaining to the picking of the jurors, a comment on a person that is not involved, or pertaining to the——

Q. Well, did he make any statement to you concerning the facts of this case?

A. I do not recall. Not to my knowledge.

Q. You don't recall?

A. No.

Q. Did he make any statement to you concerning a matter of Mrs. Duncan not having paid money to these men?

A. No.

Q. Did he mention any amount of money?

[fol. 684] A. No.

Q. Do you recall whether he made any statement at all about the facts of this case?

A. None pertaining to the case. If there was any discussion, it would be concerning, as I stated before, a juror or comment of someone coming as a prospective juror.

Q. Well, in any event, whatever he might have said to you——

A. I have entered no comment—I mean I have entered into conversation with no one since this started, or even before, where I have even mentioned Mrs. Duncan's name.

Q. I see. Then if there was any discussion at all, it was then, as I understand your statement to me, it would have been only with respect to the selection of the jury in this matter?

A. Absolutely. If it had been otherwise, I am sure that I would have noted what he had in his mind and I would have declined to get into any discussion of that kind whatsoever.

Mr. Sullivan: All right. Thank you. I have no further questions.

The Court: The peremptory is with the defendant.

Mr. Sullivan: We will excuse Mr. Charles D. Bushman, Juror No. 5.

(The prospective juror was excused.)

The Clerk: Robert—initial "E"—Noonan—N-o-o-n-a-n.

[fol. 685] Robert E. Noonan, Sr.

I am sorry, your Honor. He was excused on the 18th for lack of transportation.

The Court: Let me see that. Was he excused?

The Clerk: He was excused because he had no transportation, your Honor.

May—M-a-e—W—Capper—C-a-p-p-e-r—Mae W. Capper.

The Court: Is that Mrs. Capper?

The Prospective Juror: Yes, sir.

The Court: You have been in the courtroom here all the time during the last few days, have you not?

The Prospective Juror: Yes, sir.

The Court: And you have heard everything that has been going on here?

The Prospective Juror: Yes, sir.

The Court: You know what this case is all about?

The Prospective Juror: Yes, sir.

The Court: Could you be entirely fair and impartial if you should serve on this jury?

The Prospective Juror: No, sir.

The Court: What?

The Prospective Juror: No, sir, I wouldn't.

The Court: You have conscientious scruples against the death penalty?

The Prospective Juror: I do.

[fol. 686] Mr. Gustafson: Challenge for cause.

The Court: You are excused.

(The prospective juror was excused.)

The Court: Call another name.

The Clerk: James Calvin Dye—D-y-e.

The Court: Where do you live, Mr. Dye?

The Prospective Juror: Camarillo.

The Court: How long have you lived in Ventura County?

The Prospective Juror: Nine years.

The Court: Did you ever serve on a jury in a criminal case?

The Prospective Juror: No, sir.

The Court: You have been here and you have heard everything that has gone on here, haven't you?

The Prospective Juror: Yes, sir.

The Court: And if you should serve on this jury, could you be absolutely fair and impartial to both sides?

The Prospective Juror: Yes.

The Court: Do you have any conscientious scruples against the death penalty?

The Prospective Juror: No, sir.

The Court: You may inquire.

Mr. Sullivan:

Q. Mr. Dye, may I inquire as to your business or occupation?

A. Cook.

Q. Pardon?

[fol. 687] A. Cook.

Q. Cook?

A. (The prospective juror nodded affirmatively.)

Q. Are you employed as a cook at the Sate Hospital in Camarillo?

A. Yes, sir.

Q. Are you acquainted with Dr. May at the State Hospital?

A. No, sir. I know who he is but I'm not acquainted with him.

Q. You don't know him personally?

A. No.

Q. Do you know—withdraw it. Are you acquainted with Dr. Nash at the State Hospital?

A. I know him when I see him but I'm not a friend of his.

Q. I understand. He just happens to be one of the doctors attached to that hospital and you get to know the staff on the hospital when you see them, and that is merely a passing acquaintance, is that correct?

A. Yes.

Q. You understand from what you heard so far since you have been in the courtroom, that Mrs. Duncan is

charged in this indictment with the murder of one Olga Duncan, do you not?

A. Yes, sir.

Q. Is there anything about the nature of that charge [fol. 688] that would cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. Are you married, Mr. Dye?

A. No, sir.

Q. Well, let's assume that the evidence in this case should disclose that Olga Duncan was the daughter-in-law of Elizabeth Duncan. Would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. Have you or has any relative of yours or anyone near and dear to you ever been the victim of a crime of passion, assault?

A. No, sir.

Q. Have you ever had occasion to be a witness against any person charged with a similar offense?

A. No, sir.

Q. Have you ever been connected with any law enforcement agencies?

A. No, sir.

Q. Is any relative of yours or anyone near and dear to you connected with any law enforcement agencies?

A. No.

Q. Are you acquainted with Mr. Roy Gustafson, the District Attorney of this County?

A. No, sir.

[fol. 689] Q. Do you know any of the deputies in his office or members of his staff?

A. I know who they are when I see them but not personally acquainted.

Q. I see. Well, the fact that his office, Mr. Gustafson, is prosecuting this case, the District Attorney of Los Angeles County—Ventura County—that wouldn't cause you to entertain any bias or prejudice against Mrs. Duncan, would it?

A. No, sir.

Q. Would you be apt to give any greater credence to the testimony of a law enforcement officer if one should

testify in this case than you would that of any other witness, merely because he was a law enforcement officer?

A. No, sir.

Q. Do you feel that you could weigh and consider the testimony of such a witness by the same standard as you would that of any other witness? Is that right?

A. Yes, sir.

Q. Now, assuming that Mrs. Duncan should take the witness stand and testify as a witness in her own behalf, would you be apt to deny her the benefit of her own testimony, merely because she happens to be the defendant in this case?

Mr. Gustafson: Objected to on the grounds that is incompetent, irrelevant, immaterial, misleading.

The Court: Read that question, Mr. Reporter.

(Record read.)

[fol. 690] The Court: The objection is overruled.

Mr. Sullivan: You may answer that question.

The Prospective Juror: Would you read the question again.

(Record read.)

The Prospective Juror: A. No, sir.

Mr. Sullivan:

Q. You feel that you could weigh her testimony by the same standards that you could of any other witness?

A. Yes, sir.

Q. You understand from what you heard in court these last few days, that the law presumes Mrs. Duncan to be innocent of this charge of murder, do you not?

A. Yes, sir.

Q. And if you are accepted as a juror in this case, do you feel that you could accord to her the benefit of that presumption of the law?

A. Yes, sir.

Q. And if you are accepted as a juror in this case, would you require the prosecution to prove to your satisfaction, to a moral certainty and beyond a reasonable doubt, the guilt of Mrs. Duncan?

A. Yes, sir.

Q. And if after a full and fair consideration of all the evidence in this case and in light of the instructions that will be given to you by the Court, you then have a reason-
[fol. 691] able doubt as to the guilt of Mrs. Duncan, would you hesitate to resolve that doubt in her favor and find her not guilty?

A. No, sir.

Q. Would you continue to vote for a verdict of not guilty as long as you continued to entertain a reasonable doubt as to her guilt?

A. Yes, sir.

Q. And you feel that you could do that, Mr. Dye, irrespective of how your fellow jurors might feel about the matter, is that right?

A. Yes, sir.

Q. Do you read some of the local papers? Are they circulated down at the Camarillo State Hospital there?

A. Yes, they are.

Q. I assume they are made available to the employees there?

A. Yes, sir.

Q. And do you ever listen to news broadcasts on the radio?

A. Yes, sir.

Q. Have you heard some of the local news broadcasts from the local station here?

A. Yes, sir.

Q. And do you ever listen to news broadcasts on television?

A. Some. Not too much.

[fol. 692] Q. Well, have you ever read anything about this particular case?

A. I read some. I read headlines.

Q. Do you recall whether or not you ever read any article which purported to report the testimony which was taken before the Grand Jury in this matter?

A. Well, I believe it was that article. I read the headlines of some of it.

Q. You didn't read the details?

A. I didn't study it close enough to know whether what I read was from the Grand Jury or where it was from.

Q. All right. But do you recall whether or not you ever read any article in a newspaper which purported to report a confession of one Augustine Baldonado?

A. Well, I remember the headlines, but I don't remember reading it word for word.

Q. Do you recall having read any newspaper article which purported to report a confession of one Luis Moya?

A. I never read it close enough to distinguish the two names, one from the other, see, so I don't know whether I read part or not.

Q. Well, at least would this be fair to say, that from what you read in the paper, you learned there had been a confession by both Baldonado and Moya, is that correct?

A. I believe the headlines on the paper read to the effect. [fol. 693] Q. Do you recall whether or not you ever listened to any news broadcast on the radio which purported to report a confession of Luis Moya; that is, by way of radio broadcast?

A. No, I don't believe I heard it specified that it was a confession.

Q. In addition to what you read concerning this particular case, did you ever discuss it with anyone?

A. No.

Q. Did you ever hear it discussed?

A. I have heard people talk about it but I have never listened closely to any discussions.

Q. You yourself did not participate in those discussions, is that correct?

A. No.

Q. Mr. Dye, as a result of what you read or what you heard concerning this case, have you yourself formed any opinion concerning either the guilt or innocence of Mrs. Duncan?

A. None whatsoever.

Q. And as you sit in the jury box here today, do you have any opinion in your own mind concerning her guilt or innocence?

A. No, sir.

Q. You feel that if you are accepted as a juror in this case, that you can judge her guilt or innocence solely and [fol. 694] exclusively on the evidence as it comes to — from the witnesses in this courtroom, is that right?

A. Yes.

Q. And would you do just that if you are accepted as a juror in this case?

A. Yes.

Q. And you wouldn't allow your verdict to be influenced by anything you might have read or heard about this case in the past, is that right?

A. No, sir.

Q. Do you know of any reason whatsoever why you could not give to Mrs. Duncan a fair and impartial trial?

A. No, sir.

Mr. Sullivan: Thank you. Pass for cause.

Mr. Gustafson:

Q. Mr. Dye, you have heard the questions that I have asked the other jurors, prospective jurors in the box. Can you, going over them in your mind, can you think of any to which you would give answers, different from the answers given by the other jurors remaining in the box?

A. I don't know which answers you are referring to.

Q. I see. Well, it was the general series of questions——

A. They gave different answers. Different ones gave different answers, so——

Q. Well, supposing we do it this way then, Mr. Dye. With respect to penalty, do you have any conscientious [fol. 695] opinion that would keep you from voting for a verdict of first degree murder, knowing that one of the two penalties is the death penalty?

A. No, sir.

Q. Do you have any opinion in your mind that the death penalty should never be applied to a woman?

A. No, sir.

Q. Do you have any opinion that the death penalty should never be applied to a person who didn't actually kill but nevertheless was guilty under the law of first degree murder?

A. No, sir.

Q. Would you be able to and try to conscientiously resolve and decide questions of fact, based upon conflicting evidence in the case?

A. Yes, sir.

Q. And the mere fact that there might be conflicting evidence; that is, testimony, for example, by one witness saying so and so and testimony by another witness saying the opposite, wouldn't cause you in and of itself to say that created a reasonable doubt in your mind and therefore the defendant is not guilty?

A. No, sir.

Q. You would do your best to decide what was the truth?

A. Yes, sir.

[fol. 696] Q. And in weighing the testimony of every single witness that goes on the witness —, you would — the directions of Judge Blackstock, would you not, as to the factors that you were to consider?

A. Yes, sir.

Q. And if he tells you that you are to determine this by the demeanor of the witness on the stand, the appearance of the witness, the manner of his testifying, his interest on the case, whether he has previously made conflicting statements, those are all the matters you would then consider in deciding whether to believe him at this particular time?

A. Yes, sir.

Q. And the same rules that govern the weighing of testimony of every witness, you would apply to the defendant if she becomes a witness, would you not?

A. Yes, sir.

Mr. Gustafson: All right. Pass for cause.

The Court: The peremptory is with the People.

Mr. Gustafson: I accept the jury and it is now constituted.

The Court: The peremptory is now again with the defendant.

Mr. Sullivan: The defendant will excuse Mr. Bush Metcalf, as juror number eight.

(The prospective juror was excused.)

[fol. 697] The Court: Call another name.

The Clerk: Hayden—H-a-y-d-e-n—initial "K"—Collins, Hayden K. Collins.

The Court: Where do you live, Mr. Collins.

The Prospective Juror: Ventura.

The Court: How long have you lived there?

The Prospective Juror: Two years.

The Court: How long have you lived in Ventura County?

The Prospective Juror: Seven years all together.

The Court: Did you ever serve on a jury in a criminal case?

The Prospective Juror: No, sir.

The Court: Well, you have been here in the courtroom long enough to know what this case is all about?

The Prospective Juror: Yes, sir.

The Court: You have heard everything that went on here?

The Prospective Juror: Correct.

The Court: Is there any reason why you couldn't be fair and impartial if you should serve on this jury?

The Prospective Juror: No, sir.

The Court: The defendant in this case is charged with murder and if she should be convicted, one of the penalties might be death. Do you have any conscientious scruples against the death penalty?

The Prospective Juror: Yes, I do.

[fol. 698] Mr. Gustafson: Challenge for cause

The Court: You are excused.

(The prospective juror was excused.)

The Court: Call another name.

The Clerk: Pearl—P-e-a-r-l Wayman—W-a-y-m-a-n. Pearl Wayman.

The Court: Is it Mrs. Wayman?

The Prospective Juror: Yes, sir.

The Court: In this case the defendant is charged with murder and if she should be convicted, one of the penalties might be death. Are you conscientiously opposed to the death penalty?

The Prospective Juror: No, sir.

The Court: All right. You may inquire.

Mr. Sullivan: Your Honor, would this be a convenient time for the Court to take a recess?

The Court: All right, we will take a brief recess.

(A brief recess.)

[fol. 699] The Court: Go ahead.

Mr. Sullivan: Your Honor, before interrogating Mrs. Wayman, I understand that Mr. Tucker, I believe it is,

wanted to direct my attention or the Court's attention to an answer that he gave, that he wanted to answer more fully; is that right, Mr. Tucker?

The Prospective Juror Tucker: Yes.

Mr. Sullivan: What was it that you wanted to say?

The Prospective Juror: I didn't realize that the District Attorney was associated with the law—what the law enforcement agency at the time. My father-in-law was the District Attorney of Ventura County.

Mr. Sullivan: He was?

The Prospective Juror: Yes, sir.

Mr. Sullivan: The District Attorney of Ventura County?

The Prospective Juror: Yes, sir.

Mr. Sullivan: How long ago was that?

The Prospective Juror: Before Mr. Gustafson.

Mr. Sullivan: He was Mr. Gustafson's predecessor in office; is that right?

The Prospective Juror: Yes, sir.

Mr. Sullivan: All right. Thank you for directing that to my attention.

Would the fact that your father-in-law at one time was the District Attorney of this County, would that cause you to be biased or prejudiced at all in this case?

[fol. 700] The Prospective Juror: No, sir.

Mr. Sullivan: You don't think that it would have any tendency to affect your verdict one way or the other; is that correct?

The Prospective Juror: I have no idea what his opinions are on any of this.

Mr. Sullivan: It wouldn't affect your verdict one way or the other?

The Prospective Juror: No, sir.

Mr. Sullivan: Thank you, Mr. Tucker.

Mr. Gustafson: May I inquire?

Mr. Sullivan: Yes.

Mr. Gustafson: Mr. Tucker, it wouldn't cause you to be against me, would it, by reason of the fact——

The Prospective Juror: No, sir.

Mr. Gustafson: —your father-in-law was once a political opponent of mine?

The Prospective Juror: No, sir.

Mr. Gustafson: You could give me just as fair a shake on this as you would the defendant; is that right?

The Prospective Juror: Yes, sir.

Mr. Gustafson: You would approach the matter with a completely unbiased, unprejudiced view?

The Prospective Juror: Yes, sir.

Mr. Gustafson: Thank you.

Mr. Sullivan:

Q. Is it Mrs. Wayman?

[fol. 701] A. Yes, sir.

Q. Mrs. Wayman, may I inquire as to your business or occupation, please?

A. Housewife.

Q. And is there a Mr. Wayman?

A. Yes.

Q. His business, please?

A. Construction work.

Q. Construction business or construction material?

A. Yes.

Q. You live in Oxnard?

A. Yes, sir.

Q. How long have you been a resident of Ventura County?

A. Thirty years.

Q. Thirty years. Have you ever had occasion to sit as a trial juror in a criminal case?

A. No, sir.

Q. You understand from what you have already heard in this courtroom that Mrs. Duncan is charged in this indictment with the murder of one Olga Duncan, do you not?

(Prospective juror nods affirmatively.)

Q. Is there anything about the nature of that charge that would cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

[fol. 702] Q. If the evidence in this case should disclose that Olga Duncan was the daughter-in-law of Elizabeth Duncan, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. If the evidence in this case should disclose that Olga Duncan was at the time she came to her death pregnant, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. Have you or has any member of your family or anyone near and dear to you ever been the victim of a crime of passion or assault of any kind or nature?

A. No, sir.

Q. Or ever had an occasion to be a witness against any person charged with a similar offense?

A. No, sir.

Q. Have you ever been connected with any law enforcement agency?

(Prospective juror shakes head negatively.)

Q. Any member of your family or anyone near and dear to you connected with any law enforcement agency?

A. No, sir.

Q. Are you acquainted with Mr. Gustafson, the District Attorney?

A. No, sir.

[fol. 703] Q. Are you acquainted with any of the deputies in his office or members of his staff?

A. I am not.

Q. In the event that law enforcement officers should testify in this case, would you be apt to give any greater credence to their testimony merely because they happened to be law enforcement officers than you would that of any other witness?

A. No.

Q. In the event that Mrs. Duncan should take the witness stand and testify as a witness in her own behalf, would you be apt to deny her the benefit of her own testimony merely because she happens to be the defendant in this case?

A. No.

Q. You feel that you could weigh and consider her testimony by the same standards as you would that of any other witness; is that right?

(Prospective juror nods head affirmatively.)

Q. Speak up, Mrs. Wayman. The reporter can't get your answers. He has to hear you.

Mrs. Wayman, you understand from what you have already heard, do you not, that the law presumes Elizabeth Duncan to be innocent of this charge of murder, do you not?

A. Yes, sir.

Q. And that that presumption goes with her throughout [fol. 704] this trial?

A. Yes.

Q. You understand that. If you are accepted as a juror in this case, do you feel that you could accord to her the benefit of that presumption of law?

A. Yes.

Q. Is there any doubt in your mind about it?

A. No, sir.

Q. If you are accepted as a juror in this case, would you require the District Attorney to prove to your satisfaction to a moral certainty and beyond a reasonable doubt the guilt of Mrs. Duncan?

A. Yes, sir.

Q. Let's say that you are accepted as a juror and you had heard all of the evidence in the case. You have received the instructions as to the law from the Court. You have retired to the jury room. You have fully and fairly discussed the evidence with your fellow jurors. You have endeavored conscientiously to weigh that evidence in the light of the law as given to you by His Honor, and you, yourself, then honestly and conscientiously entertain a reasonable doubt as to the guilt or innocence of Mrs. Duncan. Under those circumstances would you hesitate to resolve that doubt in her favor and vote for a verdict of not guilty?

A. I guess so.

Q. Your answer is, "Yes"?

[fol. 705] A. Yes.

Q. Would you continue to do that so long as you did entertain a reasonable doubt as to her guilt?

A. Yes.

Q. And you would do that so long as you entertained that reasonable doubt irrespective of how your fellow jurors might feel about the matter?

A. Yes.

Q. Mrs. Wayman, do you subscribe to any of the local newspapers?

A. Yes, sir.

Q. And have you been a subscriber for quite some time past?

(Prospective juror nods head affirmatively.)

Q. As early, certainly, or as far back as November and December of last year?

(Prospective juror nods head affirmatively.)

Q. And presently are?

A. Yes.

Q. Do you sometimes listen to the news broadcasts on the radio station?

A. No, sir.

Q. Do you ever listen to news broadcasts on television programs?

(Prospective juror shakes head negatively.)

Q. Have you ever read in the newspaper anything [fol. 706] concerning this case?

A. Yes.

Q. And have you read any article in any newspaper which purported to report the testimony that was given before the grand jury?

A. No, I didn't notice that.

Q. You didn't notice that?

A. No.

Q. Did you ever read any article in any newspaper which purported to report a confession of one Augustine Baldonado?

A. Some of it.

Q. Some of that you did. Did you ever read any newspaper article which purported to report the confession of one Luis Moya?

A. Some of that.

Q. Some of that, and insofar as what you read in these newspaper articles which purported to report the confessions of those men, did you read anything wherein they accused Elizabeth Duncan of participation in this offense?

A. Yes.

Q. Now, in addition to what you read concerning this case did you discuss it with anybody?

A. A few.

Q. A few people?

A. Yes.

[fol. 707] Q. And you heard them discuss it also?

(Prospective juror nods head affirmatively.)

Q. You, yourself, discussed it with them; is that right?

(Prospective juror nods head affirmatively.)

Q. Now, these people——

The Court: Wait a minute. I wish you would please speak up. The court reporter can't get the nod of your head.

The Prospective Juror: Yes.

The Court: Unless he happens to be looking at you.

The Prospective Juror: Yes.

The Court: Speak out, yes or no, whatever the answer is.

Mr. Sullivan:

Q. These people with whom you discussed this matter or whom you heard discuss it, do you know whether they had any personal knowledge of the facts and circumstances of this case?

A. No, sir.

Q. You don't know that?

A. No, sir.

Q. Do you know whether or not those people are likely to be witnesses in this case?

A. No, sir.

Q. Did you believe the truth of what they said?

A. I didn't pay any attention to it.

Q. Did you have any reason to disbelieve them?

[fol. 708] A. No, sir.

Q. Now, have you, yourself, ever formed any opinion as a result of what you read or what you discussed or heard discussed concerning this case with respect to the guilt or innocence of Mrs. Elizabeth Duncan?

A. Yes.

Q. And the opinion which you formed, was that an opinion that was adverse to Elizabeth Duncan?

A. Yes, sir.

Q. In other words, I take it that you formed an opinion in your own mind that Mrs Duncan was guilty of this offense; is that correct?

A. I believe so.

Q. You believe it so. As you sit in the jury box today you still have that opinion, do you?

A. I have *have* to hear evidence on both sides before——

Q. I say as you sit in the jury box today do you still entertain that same opinion?

A. I do.

Q. Is that opinion such that it would require evidence on the part of the defense in this case to remove?

A. Yes, sir.

Q. Is that opinion such that it is likely to influence your verdict in this case one way or the other?

A. No, sir.

Q. But it would require some evidence on the part [fol. 709] of the defense to remove?

A. Yes.

The Court: Mrs. Wayman, if I tell you that the law is that the defendant doesn't have to testify and she doesn't have to educe any testimony at all, as far as that is concerned, but unless the prosecution proves her guilty beyond a reasonable doubt, it is your duty to acquit her. Now, she is not required to testify and she is not required to educe any testimony, to put any witness on the witness stand under the law of this state. The jury is here to determine what the facts are, and the law is that the prosecution must prove the defendant guilty beyond all reasonable doubt. The prosecution must do that. Mr. Gustafson represents the prosecution. He must prove to you by testimony here in court that she is guilty before you could convict her. If he puts on witnesses and she puts on no witnesses at all and doesn't testify herself, you couldn't find her guilty unless you believed the witnesses that Mr. Gustafson puts on, unless you believed that evidence beyond a reasonable doubt, unless you believed that she was guilty beyond a reasonable doubt you couldn't convict her. Don't you understand that?

The Prospective Juror: Yes, sir.

The Court: Well, you wouldn't require her to put on testimony then, would you? You wouldn't have to have testimony from her side to convince you that she is not [fol. 710] guilty, would you?

The Prospective Juror: No.

The Court: Well, a while ago you said you would.

Mr. Gustafson: No, Your Honor.

The Court: You didn't mean that, evidently.

Mr. Gustafson: No, Your Honor, she didn't say that.

The Court: She said she would require the defendant to produce testimony to remove her opinion.

Mr. Gustafson: Her opinion, correct, but that is a different thing than saying——

The Court: Yes, that is different.

Mr. Gustafson: Completely different.

The Court: There is a difference, all right, but I am trying to educate her on that subject.

Mr. Gustafson: Yes, I understand, but her opinion may remain the same and she may still vote not guilty if I don't prove the case.

The Court: That is what I am trying to find out.

Mr. Gustafson: Yes. I think she expressly said, Your Honor, that she would not allow that opinion to influence her verdict and that she would base her verdict on the evidence in the case.

The Court: All right, do you want to examine her now?

Mr. Gustafson: I don't know if Mr. Sullivan is through. [fo]. 711] The Court: I thought he was through.

Mr. Gustafson: No, he hasn't finished, nor has he challenged the juror for cause.

The Court: No, I know he hasn't.

Mr. Sullivan: Well, I will now challenge Mrs. Wayman for cause.

Mr. Gustafson: Now, I would like to examine Mrs. Wayman. Wayman, is it, not Wayman?

Mr. Sullivan: Wayman.

Mr. Gustafson: Waymun.

Q. So that if I understand what you are saying, it is simply that you do now have an opinion based on what you read and heard, that Mrs. Duncan is guilty. Nevertheless, and notwithstanding that opinion you will act fairly and impartially as a juror?

A. Yes, sir.

Q. Is that correct?

(Prospective juror nods head affirmatively.)

Q. And in that respect if the Judge tells you that you cannot return a verdict of guilty despite your belief in her guilt unless I prove by evidence here in court to your satisfaction and beyond a reasonable doubt that she is guilty, you wouldn't do it, would you?

A. No, sir.

Q. Regardless of the opinion that you now hold or might still hold; isn't that true?

[fol. 712] A. Yes.

Q. So that if I do not produce evidence satisfying you beyond a reasonable doubt of her guilt, you will vote for a verdict of not guilty?

A. Yes, sir.

Q. Despite the fact that you may still retain the opinion based on what you have read in the newspapers that, really, she is guilty?

A. Yes.

Q. If I fail to prove it?

A. Yes, sir.

Q. Isn't that it?

A. Yes, sir.

Q. And so you wouldn't allow what you may have read or heard to be taken into account in your deliberations in the jury room as to her guilt or innocence, will you?

A. No, sir.

Q. You will base that solely on the evidence produced here in court?

A. Yes, sir.

Q. And with respect to that evidence, you will follow the instructions given to you by the Judge, will you not?

A. Yes, sir.

Q. Including the instruction in the first instance she is [fol. 713] presumed to be innocent, you will follow that, will you not?

A. Yes, sir.

Q. And also that she is not required to prove her innocence, but I, on the other hand, am required to prove her guilt; you will follow that instruction?

A. Yes.

Q. As a matter of fact, there is no instruction that will be given to you by Judge Blackstock as the law that you won't follow, is there?

A. No.

Q. You would follow his instructions whether you agree with them or not; in other words, whether you think that they are a good law or a bad law, you will, nevertheless follow what he says is the law?

A. Yes.

Q. So that in that situation, as I understand it you would act fairly and would act impartially; is that right?

A. Yes.

Q. You could do that and you would do it?

A. Yes, sir.

Q. And in that frame of mind you wouldn't mind having jurors try you or somebody else that you happen to know if those jurors were of the frame of mind that they would act fairly and impartially on the evidence of the case regardless of any opinion they might hold when they [fol. 714] start; is that true?

A. Yes.

The Court: You pass for cause?

Mr. Gustafson: Pardon?

The Court: Do you pass now for cause?

Mr. Gustafson: No, I didn't pass for cause because I don't know that Mr. Sullivan is through examining her yet.

Mr. Sullivan: I challenged for cause. I have no further questions to ask this prospective juror.

Mr. Gustafson: Then I would like to examine—well, I suppose the Court should rule on the challenge for cause made by Mr. Sullivan.

The Court: Well, that challenge is disallowed.

Mr. Gustafson?

Q. Mrs. Wayman, with respect to the penalty feature of this trial; that is, if Mrs. Duncan should be found guilty of first degree murder by this jury, and if following that, this jury should hear further evidence with respect to the penalty and then retire again to deliberate on whether the penalty should be death or life imprisonment, do you have any conscientious opinion concerning the death penalty which would preclude you from applying it?

A. No, sir.

Q. Do you have any opinion that would keep you from applying it in a case where you otherwise thought it

[fol. 715] was a proper penalty simply because the person to whom it was to be applied is a woman?

A. No.

Q. Do you have any idea that you would fail to apply it in any case where the person, although guilty of first degree murder, didn't actually commit the killing herself?

A. No, sir.

Q. With respect to the evidence in the case, Mrs. Wayman, do you believe that you could weigh the evidence by the rules given to you by Judge Blackstock?

A. Yes, sir.

The Court: You used the words "actually commit the crime."

Mr. Gustafson: Actually do the killing.

The Court: You mean directly committed.

Mr. Gustafson: I meant actually do the killing, not actually commit the crime.

The Court: I know, but you didn't say that.

Mr. Gustafson: Well, if there is any mistake on it——

The Court: The question is whether she is guilty of murder or not. She would be just as guilty of murder whether she directly did the killing or not.

Mr. Gustafson: Yes.

The Court: I am just mentioning the point because I want the prospective juror to really understand it.

[fol. 716] Mr. Gustafson: Yes, I am sorry if I misstated it.

Q. You understood, did you, that what I meant by that is that a person can be guilty of first degree murder although that person did not directly commit the killing or do the killing?

A. Yes.

Q. In other words, killing is different from murder. Murder is the legal conclusion that comes from a set of facts including the killing. Murder is the crime. Killing isn't the crime. So that if a person was guilty of murder, the crime of murder in the first degree, but didn't actually personally do the killing, nevertheless, the death penalty is an appropriate one, of the two possible penalties.

A. Yes.

Q. You realize that?

A. Yes.

Q. And you don't have any objections to applying it simply because the person involved did not actually personally do the killing?

A. No, sir.

Q. All right. Now, with respect to weighing this evidence and judging the evidence, I think from my prior questions you may have ascertained that the real reason we are here is because there will be some disputes as to what the facts were. One side will say one thing and [fol. 717] one side the other, and it is your job as a juror to try to decide from that conflicting evidence what evidence is the true evidence, what are the true facts. You won't say that merely because there are witnesses who have testified opposite each other, that that fact alone will prevent you from deciding what the facts are and, therefore, you will vote not guilty? You wouldn't do that, would you?

A. No, sir.

Q. And you will try to ascertain what they were——

A. Yes.

Q. —based on that evidence? And in so doing you will apply the rules given to you by Judge Blackstock?

A. Yes.

Q. If he tells you with respect to judging the testimony of every witness in the case that you may consider such things as the appearance of the witness on the stand, the demeanor of the witness, his manner of testifying, whether or not he has previously been convicted of a felony, whether he has made prior conflicting statements, and his interest in the case, you will consider all of those factors in judging whether you should give credence or believeability to the testimony of a witness, won't you?

A. Yes, sir.

Q. You would not, Mrs. Wayman, allow sympathy to govern your verdict as to whether Mrs. Duncan is guilty or innocent of first degree murder?

[fol. 718] A. No, sir.

Q. No matter how sympathetic you might be to Mrs. Duncan at the conclusion of the case, if you believe beyond a reasonable doubt that she committed murder, you will vote that way, won't you?

A. Yes, sir.

Q. Regardless of the consequences?

A. Yes, sir.

Q. And you feel that same way with respect to the penalty issue if this jury should be called upon at a later time to decide that; is that correct?

A. Yes.

Q. Just because Mr. Sullivan has a live person as his client and I represent an intangible client, an entity called the People of the State of California, you won't be more favorable to his side merely because of that, will you?

A. No, sir.

Q. So far as you are concerned, is there any reason why you couldn't be a fair and impartial juror in this case?

A. Well, I don't think maybe this answers that, but I really don't have satisfactory transportation and I also have my aged father-in-law at home who needs my services.

Q. In other words, your aged father-in-law is ill [fols. 719-720] and needs your services?

A. Yes.

Q. A personal member of the family?

A. My father-in-law.

Q. Your father-in-law?

A. Yes.

Q. And you have difficulty with transportation?

A. Yes.

Mr. Gustafson: Well, if counsel cares, I will stipulate that she may be excused on that basis.

Mr. Sullivan: So stipulate.

The Court: All right, you are excused. Call another name.

[fol. 721] The Clerk: William James Missimer, M-i-s-s-i-m-e-r. William James Missimer.

The Court: Where do you live, Mr. Missimer?

The Prospective Juror: Ventura.

The Court: Ventura?

The Prospective Juror: Yes.

The Court: How long have you lived in Ventura County?

The Prospective Juror: Two years.

The Court: Two years?

The Prospective Juror: Two years. Yes, sir.

The Court: Did you ever serve on a jury in a criminal case?

The Prospective Juror: No, sir.

The Court: Any place?

The Prospective Juror: No, sir.

The Court: What is your occupation?

The Prospective Juror: I am an accountant.

The Court: If you should serve as a juror in this case, would you be entirely fair and impartial to both sides?

The Prospective Juror: Yes, sir.

The Court: You have been here in the courtroom, of course, the last few days?

The Prospective Juror: Yes, sir.

The Court: You have heard everything that has gone on here?

The Prospective Juror: Yes, sir.

[fol. 722] The Court: And you know what the case is all about?

The Prospective Juror: Yes, sir.

The Court: In this case the defendant, as you know by this time, has been charged with the crime of murder and if she should be convicted, there could be one of two penalties, either death or life imprisonment. Do you have any conscientious scruples against the death penalty?

The Prospective Juror: No, sir.

The Court: All right. You may inquire.

Mr. Sullivan: Thank you, your Honor.

Q. Mr. Missimer, are you married?

A. No, sir.

Q. You understand from what you have already heard, that Mrs. Duncan is charged in this indictment with the murder of one Olga Duncan, do you not?

A. Yes, sir.

Q. And if the evidence in this case should disclose that Olga Duncan was the daughter-in-law of Elizabeth Duncan, would that fact cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. If the evidence should disclose that Olga Duncan at the time she came to her death was then pregnant, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. Is there anything about the nature of this charge [fol. 723] that would cause you to entertain any bias or prejudice against her?

A. No, sir.

Q. Have you or has any relative of yours or anyone near and dear to you ever been the victim of a crime of passion or assault?

A. No, sir.

Q. Or ever had occasion to be a witness against any person charged with such a crime?

A. No, sir.

Q. Have you ever been connected with any law enforcement agency?

A. No, sir.

Q. Do you have any relatives or anyone near and dear to you that is connected in any manner with any law enforcement agency?

A. No, sir.

Q. You stated to the Court that you were an accountant?

A. Yes, sir.

Q. Are you employed by a private concern or by some public——

A. Shell Chemical Corporation.

Q. Are you acquainted with Mrs. Gustafson, the District Attorney in this County?

A. No, sir.

[fol. 724] Q. Are you acquainted with any of the deputies in his office or any of the members of his staff?

A. No, sir.

Q. In the event that a law enforcement — should be called as a witness in this case, would you be apt to give any greater credence to the testimony of such a witness than you would that of any other witness, merely because he happens to be a law enforcement officer?

A. No, sir.

Q. You feel that you could weigh and consider the testimony of such a witness by the same standards as you would that of any other witness, is that right?

A. Yes, sir.

Q. Well, in the event that Mrs. Duncan should take the witness stand and testify as a witness in her own behalf,

would you be apt to deny her the benefit of her own testimony, merely because she happened to be accused of this offense?

A. No, sir.

Q. You feel that you likewise could weigh and consider her testimony by the same standard as you would that of any other witness, is that right?

A. Yes, sir.

Q. You understand from what you heard in this courtroom, that the law presumes that Elizabeth Duncan is innocent of this offense, do you not?

A. Yes, sir.

[fol. 725] Q. And you further understand from what you heard here, that that presumption goes with her throughout this trial?

A. Yes, sir.

Q. If you are accepted as a juror in this case, do you feel that you could accord to her the benefit of that presumption?

A. Yes, sir, I do.

Q. And if you are accepted as a juror in this case, would you require the prosecution to prove to your satisfaction, to a moral certainty and beyond a reasonable doubt, the guilt of Elizabeth Duncan?

A. Yes, sir.

Q. And if, after you have heard all the evidence in this case, have received the instructions on the law from his Honor, and you have retired to the jury room, and you have fully and fairly discussed the evidence in this case with your fellow jurors, you have honestly and conscientiously tried to weigh that evidence in the light of the law as given to you by the Court, and then honestly and conscientiously entertain a reasonable doubt as to Mrs. Duncan's innocence, would you hesitate to resolve that doubt in her favor and vote for a verdict of not guilty?

A. No, sir.

Q. Would you continue to do that as long as you did entertain that reasonable doubt as to her guilt?

[fol. 726] A. I am sorry, sir?

Q. You would continue to vote for a verdict of not guilty so long as you entertained a reasonable doubt as to her guilt, is that right?

A. Yes, sir.

Q. Do you think that you would be able to do that irrespective of how your fellow jurors might feel about the matter?

A. Yes, sir.

Q. Now, do you subscribe to any of the local papers?

A. Star-Free Press.

Q. Star-Free Press. Do you sometimes listen to news broadcasts on the radio?

A. No, sir. I haven't had a radio. Very seldom.

Q. Do you listen to the news broadcasts on television?

A. No, sir.

Q. Have you been subscribing to this local newspaper for sometime past?

A. Yes.

Q. At least as far back as November or December of last year?

A. Yes, sir.

Q. Have you read anything in the newspapers concerning this case?

A. Just the headlines.

Q. Just the headlines?

[fol. 727] A. Yes, sir.

Q. Have you read some headlines concerning this case on frequent occasions?

A. Yes, sir.

Q. Did you read any article in any newspaper which purported to report the testimony of witnesses who appeared before the Grand Jury?

A. In the headlines, yes, sir.

Q. In the headlines?

A. Yes, sir.

Q. Did you read any article in any newspaper which purported to report the confession of one Augustine Baldonado?

A. In the headlines, yes, sir.

Q. And did you read any article in any newspaper which purported to report the confession of one Luis Moya?

A. In the headlines, yes, sir.

Q. And did you read anything in any of those articles, the headlines that you read, concerning the confession of

Baldonado and Moya, wherein they accused Mrs. Duncan of participating in this offense?

A. Sir, I read where there was a confession that was supposed to have been made, but I don't know what was in it.

Q. You don't know what was in it?

A. No.

Q. So you read nothing in any newspaper where there was any accusation on their part against Mrs. Duncan, is [fol. 728] that right?

Not to my knowledge, no, sir.

Q. Well, in addition to what you read, did you discuss this case with anybody?

A. On two or three occasions, yes, sir.

Q. Did you participate in the discussion?

A. Yes.

Q. And you heard other people discuss the case, is that right?

A. Yes.

Q. And insofar as the people whom you heard discuss this case, did you believe that they were stating the truth, whatever they said in relation to it?

A. The people that I heard discuss it numbered between 15 and 20, I would say. I don't know.

Q. You don't know whether they were telling the truth or not?

A. I have no idea.

Q. Do you have any reason to disbelieve them?

A. Sir, I presumed they read it in the paper.

Q. You don't know whether or not the matters that they discussed in relation to this case were things that they knew of their own personal knowledge or not, do you?

A. No, sir.

Q. And you have no way of knowing whether any one or more of those persons might become witnesses in this case, [fol. 729] do you?

A. No, sir.

Q. Well, as a result of what you did read and discussed or heard discussed concerning this case, did you yourself form any opinion with respect to the guilt or innocence of Mrs. Duncan?

A. No, sir.

Q. And as you sit in the jury box here today, do you have any opinion concerning her guilt or innocence of this offense?

A. I have the opinion that she is innocent until she is proven guilty, sir.

Q. Well, that is your opinion now as you sit in the jury box, is that right?

A. Yes, sir.

Q. So that you have no opinion today?

A. No, sir.

Q. That she is guilty of this offense, is that right?

A. That is right.

Q. All right. Now, then let's assume that instead of Mrs. Duncan being seated here at the counsel table and on trial here today for this offense, that it was your mother that was here and that you wanted your mother to be tried before 12 men and women who would be absolutely unbiased and unprejudiced and who would render a fair and impartial verdict. Would you be willing to trust the fate of [fol. 730] your mother to the hands of 12 men and women who are of your present frame of mind?

A. Yes, sir.

Q. And if you did that, do you feel that your mother would receive a fair and impartial trial?

A. Yes, sir, I do.

Q. Now, just one other question. Do you know of any reason whatsoever why you could not act fairly and impartially as a trial juror in this case?

A. No, sir.

Mr. Sullivan: Thank you, sir. Pass for cause, your Honor.

Mr. Gustafson:

Q. Mr. Missimer, suppose that you were I, sitting here as a prosecutor, trying to get a fair and impartial jury that would weigh and consider the evidence in this case, a jury which, if the evidence showed beyond a reasonable doubt that the defendant was guilty, would return a verdict of guilty, based on that evidence. Would you be satisfied to have a jury composed of 12 persons of your present frame of mind, from that standpoint?

A. I didn't quite follow you, sir.

Q. I say, would you be satisfied if you were in my position, to have a jury of 12 persons with your frame of mind?

A. Yes, sir.

Q. In other words, so far as that is concerned, you [fol. 731] are absolutely at this point neutral and if you are convinced beyond a reasonable doubt from the evidence that the defendant is guilty, you won't have any hesitancy in voting her guilty?

A. No, sir.

Q. Any more than you would have no hesitancy in voting her not guilty, if I fall down and fail to carry out the burden of proof that the law puts on me?

A. Yes.

Q. Now with respect to the rules of law you will follow all of the instructions that Judge Blackstock gives you, will you not?

A. Yes.

Q. Do you have any conscientious opinion regarding the death penalty that would preclude you from voting for a verdict of guilty of first degree murder, when one of the two alternative penalties is the death penalty?

A. No, sir.

Q. Do you have any reservations in your mind that the death penalty should not be applicable to a woman when it might otherwise be applicable?

A. No, sir.

Q. Do you have any mental reservations that a person guilty of first degree murder, of the crime of first degree murder, should nevertheless never be given the death penalty if the death of that person was caused not by the fact that that person personally killed somebody but engi- [fol. 732] neered or hired someone else to do it?

A. No.

Q. Do you know of any reason why you couldn't be a fair and impartial juror?

A. No.

Mr. Gustafson: Pass for cause.

The Court: The peremptory is with the People.

Mr. Gustafson: I accept the jury as now constituted.

The Court: The peremptory again is with the defendant.

Mr. Sullivan: The defendant will excuse Mr. Harold P. Johnson, Juror No. 9.

(The prospective juror was excused.)

The Court: Call another name.

The Clerk: Ben Akers, Jr.—A-k-e-r-s. Ben Akers, Jr.

The Court: Where do you live?

The Prospective Juror: Simi.

The Court: You have been here in attendance on the Court?

The Prospective Juror: Yes, sir.

The Court: Every day? You have heard everything that has been going on, have you?

The Prospective Juror: Yes.

The Court: If you should be selected on this jury, if you were accepted as a juror to try this case, would you be absolutely fair and impartial to both sides?

[fol. 733] The Prospective Juror: No, sir.

The Court: Do you have any conscientious scruples against the death penalty?

The Prospective Juror: Yes, I do, your Honor.

Mr. Gustafson: Challenge for cause.

The Court: You are excused.

(The prospective juror was excused.)

The Clerk: Mrs. Viola—initial "L"—Henry—H-e-n-r-y. Viola L. Henry.

The Court: Where do you live, Mrs. Henry?

The Prospective Juror: Oxnard.

The Court: Oxnard?

The Prospective Juror: Oxnard.

The Court: How long have you lived in Ventura County?

The Prospective Juror: Seven years.

The Court: Did you ever serve on a jury in a criminal case?

The Prospective Juror: No.

The Court: Did you ever serve on a jury in any case?

The Prospective Juror: No. I have been called but not used.

The Court: Well, you have been here for several days and by this time you know what this case is all about?

The Prospective Juror: Yes, sir.

The Court: You know that the defendant, Mrs. Duncan, is charged with the crime of murder?

[fol. 734] The Prospective Juror: Yes.

The Court: And you know that any penalty, if she should be convicted, could carry the death sentence. Do you have any conscientious scruples against the death penalty?

The Prospective Juror: Yes, I do.

The Court: What?

The Prospective Juror: I do.

The Court: You do?

Mr. Gustafson: Challenge for cause.

The Court: You are excused. Call another name.

(The prospective juror was excused.)

The Clerk: Mrs. Grace E. Dominy. I believe she was excused, your honor. Wasn't she?

Mr. Gustafson: Not on my list.

The Clerk: She was excused because she was ill yesterday, your Honor.

The Court: All right. Call another name.

The Clerk: Roswell—initial "S"—Hickok, H-i-c-k-o-k.

The Court: Where do you live, Mr. Hickok?

The Prospective Juror: Ventura.

The Court: How long have you lived in this County?

The Prospective Juror: Twenty years.

The Court: Did you ever serve on a jury in a criminal case?

The Prospective Juror: No, sir.

[fol. 735] The Court: Well, you have been here for several days, so you know what this case is all about. You have heard everything that has been said here?

The Prospective Juror: Yes.

The Court: And you know the defendant is charged with the crime of murder?

The Prospective Juror: Yes.

The Court: And you know that that crime, if she should be convicted, could carry the death penalty?

The Prospective Juror: Yes, sir.

The Court: Do you have any conscientious scruples against the death penalty?

The Prospective Juror: I do.

The Court: What?

The Prospective Juror: I do, sir.

Mr. Gustafson: Challenge for cause.

The Court: All right, you are excused. Call another name.

(The prospective juror was excused.)

The Clerk: Jeanne—Riha—R-i-h-a—last name: Sollen—S-o-l-l-e n. Jeanne Riha Sollen. Is it Mrs.?

The Prospective Juror: Mrs.

The Court: Where do you live, Mrs. Sollen?

The Prospective Juror: Pardon?

The Court: Where do you live?

The Prospective Juror: Oxnard, sir.

[fol. 736] The Court: What?

The Prospective Juror: Oxnard.

The Court: How long have you lived in this County?

The Prospective Juror: About two years.

The Court: Did you ever serve on a jury in a criminal case?

The Prospective Juror: No.

The Court: You have been here now for several days, so you know what this case is all about?

The Prospective Juror: Yes, sir.

The Court: You know that the defendant is charged with murder and that that could carry, the conviction of that crime could carry, the death penalty. Do you have any conscientious scruples aganst the death penalty?

The Prospective Juror: No, sir.

The Court: All right, you may inquire.

Mr. Sullivan

Q. Mrs. Sollen, may I inquire as to your business or occupation, please?

A. I'm a free lance writer.

Q. Free lance writer?

A. Yes, sir.

Q. Is it Mrs. Sollen?

A. Yes, sir.

Q. And is there a Mr. Sollen?

A. Yes, sir.

Q. And may I inquire as to his occupation, please.

[fol. 737] A. He is wire editor of the Oxnard-Press Courier.

Q. Wire editor of the Oxnard-Press Courier, is that right?

A. Yes.

Q. Mrs. Sollen, you understand from what you have heard in the courtroom that Mrs. Duncan is charged in this indictment with the murder of one Olga Duncan, do you not?

A. Yes, sir.

Q. Is there anything about the nature of that charge that would cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. If the evidence in this case should disclose that Olga Duncan was the daughter-in-law of Elizabeth Duncan, would that fact cause you to entertain any bias or prejudice against Elizabeth Duncan?

A. No, sir.

Q. If the evidence in this case should disclose that at the time that Olga Duncan came to her death, she was then pregnant, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. Do you have any children?

A. No.

Q. Have you or has any relative of yours or anyone near and dear to you ever been the victim of a crime of [fol. 738] assault or a crime of passion of any kind?

A. No.

Q. Or ever had occasion to be a witness against any person charged with a crime of that nature?

A. No.

Q. Have you ever been connected in any manner with any law enforcement agency?

A. No.

Q. Has any relative of yours ever been connected in any manner with any law enforcement agency?

A. Yes.

Q. Is that a close relative?

A. No. Two of them were an uncle and a cousin, out of the state, both out of the state.

Q. Both out of the State. But they were connected with some law enforcement agency in some other state, is that right?

A. Yes.

Q. Would that fact cause you to entertain any prejudice in this matter at all?

A. No.

Q. If some law enforcement officer were to testify as a witness in this case, would you be apt to give any greater credence to their testimony than you would that of any other witness, merely because you happened to have some relatives who themselves were law enforcement officers?

A. No.

[fol. 739] Q. That wouldn't influence your verdict in this case one way or the other?

A. No.

Q. If the law enforcement officer should testify, would you be apt to give any greater credence to his testimony than you would any other witness, for the sole reason that he happens to be a law enforcement officer?

A. No.

Q. You feel that you could weigh and consider the evidence of such a witness by the same standards as you would that of any other witness, is that correct?

A. Yes.

Q. Now let's assume that Mrs. Duncan should take the witness stand and testify as a witness in her own behalf. Would you be apt to deny to her the benefit of her own testimony merely because she happens to be accused of this offense?

A. Partially, yes.

Q. You would?

A. Yes.

Q. You don't think that you could weigh and consider her testimony by the same standard as you would that of any other witness then, is that right?

A. That is right.

Q. I take it then you would have some prejudice against her testimony, is that right?

A. That is right.

[fol. 740] Q. And that prejudice is such that it would

prevent you from acting fairly and impartially in this matter?

A. I believe so, yes.

Q. And that is because you have formed some opinion with respect to the guilt of Mrs. Duncan?

A. Yes.

Q. I take it that since your husband works for that local paper over there, that that is the one that you read, is that right?

A. That is one of them.

Q. And this opinion which you have concerning this matter, is it one that is unfavorable to Mrs. Duncan?

A. Yes.

Q. In other words, you believe that she is guilty of this offense, is that right?

A. Yes, I do.

Q. And would it require some evidence on our part to remove that opinion of yours?

A. Yes, it would.

Q. And that opinion is such that you believe it would influence your verdict in this matter?

A. Yes, I do.

Q. And do you feel that that opinion is such that you could not act fairly and impartially as a trial jury in this matter, is that right?

A. Yes, I do.

[fol. 741] Q. Let's say that you yourself were on trial here today for this offense and that you wanted to be tried before a jury composed of men and women who would be absolutely unbiased and unprejudiced and who would render a fair and impartial verdict. Do you feel that you could receive a fair and impartial trial at the hands of 12 men and women of your present frame of mind?

A. No.

Mr. Sullivan: We will challenge this juror for cause, your Honor.

Mr. Gustafson:

Q. Mrs. Sollen, I believe that you probably understand from questions asked before, that a juror isn't disqualified merely because he has an opinion regarding the guilt

or innocence of the person, if he can, notwithstanding that opinion, act fairly and impartially. You do understand that?

A. Yes, sir.

Q. But as I take it, I take it from your answers, that despite what the Judge might tell you about basing your verdict solely upon the evidence in this case and the law as given to you by the Judge, you would be unable, you feel that you would be unable to base your verdict solely on the evidence?

A. The evidence includes, does it not, the testimony?

Q. The evidence includes the testimony but it is only that which is adduced here in court.

A. But to the testimony I would bring a bias because [fol. 742] of my earlier impressions that I'm not sure that I can remove.

Q. You are not sure that you can remove the bias. As you heard the testimony, what you have already learned through newspapers or discussions would influence the manner in which you judged the testimony, is that it?

A. I'm afraid so.

Mr. Gustafson: I won't object to the challenge for cause.

The Court: All right, the challenge is allowed. You are excused.

(The prospective juror was excused.)

The Court: Call another name.

The Clerk: Mrs. Mary—initial "P"—Colborn—C-o-l-b-o-r-n. Mary P. Colborn.

The Court: Where do you live, Mrs. Colborn?

The Prospective Juror: I live in Santa Paula.

The Court: How long have you lived in this County?

The Prospective Juror: Thirteen years.

The Court: Did you ever serve on a jury in a criminal case?

The Prospective Juror: Yes, sir.

The Court: You have?

The Prospective Juror: Yes, sir.

The Court: Well, you have been here long enough so that you know what this case is all about?

The Prospective Juror: Yes, sir.

[fol. 743] The Court: You know that the defendant is charged with murder?

(The prospective juror nodded affirmatively.)

The Court: And that crime, if she should be convicted, could carry the death penalty?

The Prospective Juror: Yes, sir.

The Court: Are you conscientiously opposed to the death penalty?

The Prospective Juror: No, sir.

The Court: All right. You may inquire.

Mr. Sullivan:

Q. Mrs. Colborn, may I inquire as to your business or occupation, please?

A. I am a homemaker.

Q. And is there a Mr. Colborn?

A. Yes, sir.

Q. And may I inquire as to his busines, please?

A. He is a tile contractor.

Q. Tile contractor?

A. Yes, sir.

Q. You indicated to the Court that you have had previous experience as a trial juror in criminal cases?

A. Yes.

Q. Have you ever sat as a trial juror in a case where a person was charged with the offense of murder?

A. Yes, sir.

Q. And has that been recently?

[fol. 744] A. I think about perhaps nine years ago, eight or nine years ago.

Q. About nine years ago. Well, you understand from what you have heard so far in the courtroom, that my client, Elizabeth Duncan, is charged with the murder of one Olga Duncan, do you not?

A. I do.

Q. Is there anything about the nature of that charge that would cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. If the evidence in this case should disclose that Olga Duncan was the daughter-in-law of Elizabeth Duncan,

would that fact cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. If the evidence in this case should disclose that Olga Duncan, at the time she came to her death was then pregnant, would that fact cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. Do you have any children?

A. I have two grown sons.

Q. You have two grown sons. Have you or has any member of your family or anyone near and dear to you, ever been the victim of any crime of passion or assault?

[fol. 745] A. No.

Q. Or ever had occasion to be a witness against any person charged with an offense of that nature?

A. Not to my knowledge.

Q. Not to your knowledge. Are you personally acquainted with Mr. Roy Gustafson, the District Attorney?

A. No.

Q. Are you personally acquainted with any of his deputies or any of the members of his staff insofar as you know?

A. Not to my knowledge.

Q. Not to your knowledge. Have you ever been connected with any law enforcement agency?

A. No, sir.

Q. Has any relative of yours or anyone near and dear to you ever been connected with any law enforcement agency insofar as you know?

A. Not to my knowledge.

Q. Well, it might be possible that law enforcement officers may testify as witnesses in this case. If they should do so, would you be apt to give any greater credence to their testimony than you would that of any other witness merely because they happened to be law enforcement officers?

A. No.

Q. Let's assume that you are accepted as a juror in this case and that Mrs. Duncan herself takes the witness stand [fol. 746] and testifies in this matter. Would you be apt to deny to her the benefit of her own testimony, because she happens to be accused of this offense?

A. No.

Q. You feel that you could weigh and consider her testimony by the same standard that you would that of any other witness?

A. Yes.

Q. You understand from what you have heard in the courtroom, that as she sits here today, the law clothes her with the presumption of innocence, do you not?

A. Yes.

Q. And that that presumption goes with her throughout this trial?

A. Yes.

Q. Do you feel that if you are accepted as a juror in this case, that you could accord to her the benefit of that presumption?

A. Yes.

Q. And if you are accepted as a juror in this case, would you require the prosecution to prove to your satisfaction, to a moral certainty and beyond a reasonable doubt, the guilt of Mrs. Duncan?

A. Yes.

Q. Do you feel that you could keep your mind open with respect to her guilt or innocence until you have heard all [fol. 747] of the evidence in this case?

A. Yes.

Q. And when I say all of the evidence, I mean not only all of the evidence offered on behalf of the prosecution but any evidence that might be offered on behalf of Mrs. Duncan?

A. I think I could.

Q. You think that you could. Well, let's assume that you are a juror in this case and that you have heard all of the evidence, you have received the instructions on the law from his Honor, you have retired to the jury room, you have discussed this evidence fully and fairly with your fellow jurors, you have endeavored to the best of your ability to apply that evidence to the law, weigh it in the light of the law as given to you by his Honor, and that you then have a reasonable doubt in your own mind as to the guilt of Mrs. Duncan. Would you under those circumstances hesitate to vote for a verdict of not guilty?

A. If I had a reasonable doubt?

Q. A reasonable doubt.

A. No.

Q. Do you read some of the local papers?

A. I take the Santa Paula Chronicle.

Q. And have you been a subscriber for some time past?

A. Yes.

[fol. 748] Q. Do you ever listen to newscasts on the radio?

A. Yes.

Q. And do you ever listen to news broadcasts on television?

A. Yes.

Q. Have you in the past read anything concerning this case?

A. Some.

Q. Did you read any articles concerning this case that purported to report the testimony taken before the Grand Jury?

A. No.

Q. Did you read any articles concerning this case that purported to report a confession of one Augustine Baldonado?

A. I glanced through some such report.

Q. And did you read any article concerning this case that purported to report a confession of one Luis Moya?

A. I noticed the name in connection with that.

Q. Did you ever hear any radio broadcasts that purported to report the confession of Luis Moya?

A. No.

Q. Well, in addition to what you read concerning this case, did you discuss it with other people?

A. No.

Q. Did you hear it discussed?

A. Yes.

[fol. 749] Q. You heard other people talk about it?

A. Yes.

Q. And were there quite a few other people that you heard talk about it?

A. I imagine around 12 or so, I think.

Q. Approximately 12 people?

A. Around that.

Q. And did you believe that what you heard these people say about this case was the truth?

A. Well, I didn't know whether it was or whether it wasn't. I wasn't interested.

Q. You had no reason to disbelieve?

A. No, nor to believe.

Q. And you do not know whether these persons that you heard discuss this case, had any personal knowledge of the matters that you heard them discuss, do you?

A. Not to my knowledge.

Q. You do not know whether these people that you heard discuss this case are likely to be witnesses in this case or not, do you?

A. I think it is very unlikely.

Q. Would you know?

A. No, I wouldn't know.

Q. You don't know who the witnesses are that are going to be called in this case, is that right?

A. I do not.

[fol. 750] Q. Well, as a result of what you read concerning this case or what you heard discussed concerning it, did you yourself form any opinion with respect to the guilt or innocence of Mrs. Duncan?

A. No, sir.

Q. Never at any time?

A. No.

Q. And as you sit in the jury box today, do you have any opinion whatsoever with respect to the guilt or innocence of Mrs. Duncan?

A. Well, I would say that she is presumed innocent until she is proved guilty.

Q. I didn't hear you?

A. Until she is proved guilty.

Q. You have no opinion that she is guilty of this offense, do you?

A. No.

Q. Let's assume that you yourself were the person on trial here today, charged with the identical offense that is charged against her, and you wanted to be tried before a jury of 12 men and women who would be absolutely fair and impartial. Would you be willing to place your fate in the hands of 12 men and women of your present frame of mind?

A. Yes.

[fol. 751] Q. Do you feel that if you did do that, that they would render a fair and impartial verdict, insofar as you are concerned?

A. Yes.

Q. Is that correct?

A. As far as I am concerned.

Q. Now, just one other question: Do you know of any reason whatsoever, Mrs. Cullen—or Colborn, why you could not render a fair and impartial verdict in this matter?

A. No.

Mr. Sullivan: Thank you. We will pass for cause.

Mr. Gustafson: Mrs. Colborn, if you were sitting in my spot and were examining prospective jurors of your frame of mind to ascertain whether those jurors might possibly have any bias or prejudice against the prosecution or in favor of the defense, would you want to accept a juror with your frame of mind?

A. Yes.

Q. In other words, as far as you are concerned, you can be fair to both sides and you won't have any favoritism toward the defense and against the prosecution?

A. I think I can be fair.

Q. There is no doubt about it, is there, Mrs. Colborn?

A. No.

[fol. 752] Q. If the Judge tells you that in deciding what the facts are and what the verdict should be that you are to do it on the basis of the evidence alone and to disregard any sympathy that might be engendered, you will do that, won't you?

A. Yes.

Q. Now, with respect to the penalty, I believe you do not have any conscientious opinion that would keep you—about the death penalty which would keep you from voting for a verdict of guilty of first degree murder, which has as one of the possible penalties the death penalty?

A. No.

Q. And do you have any mental reservations about applying the death penalty to a case where you otherwise think it is the proper penalty to apply just because the person is a woman?

A. No.

Q. Do you have any reservations about applying it in a case where a person is guilty of first degree murder, but did not actually personally commit the killing?

A. No.

Mr. Gustafson: Pass for cause.

The Court: The peremptory is with the People.

Mr. Gustafson: I accept the jury as now constituted.

The Court: The peremptory is again with the defendant.

Mr. Sullivan: The defendant will excuse Mrs. Margaret [fol. 753] Wilms, Juror Number Six.

The Clerk: Zelda W. Burns, B-u-r-n-s, Zelda W. Burns. Is it Mrs. Burns?

The Prospective Juror: Yes.

The Court: Mrs. Burns, you have been here several days so that you know what the case is all about?

The Prospective Juror: Yes.

The Court: And you know that the defendant is charged with murder?

The Prospective Juror: Yes.

The Court: And that a conviction in this case could carry the death penalty?

The Prospective Juror: Yes.

The Court: Do you know that.

The Prospective Juror: Yes.

The Court: Do you have any conscientious scruples against the death penalty?

The Prospective Juror: Yes, sir, I do.

Mr. Gustafson: Challenge for cause.

The Court: You are excused. Call another name.

The Clerk: The first name is L-e-v-a, Leva C. Calhoon, C-a-l-h-o-o-n. Leva C. Calhoon, Mrs. Calhoon.

The Court: Mrs. Calhoon, you live in the Simi Valley, do you not?

The Prospective Juror: That's right.

The Court: How long have you lived in Ventura County?

[fol. 754] The Prospective Juror: Four years.

The Court: Four years. In any event, you have been here since the inception of this trial and you know the case is all about by this time, do you not?

The Prospective Juror: I do.

The Court: You know that the defendant is charged with murder?

The Prospective Juror: Yes.

The Court: And if she should be convicted of that charge, the penalty could be death. Do you have any conscientious scruples against the death penalty?

The Prospective Juror: I do not.

The Court: You may inquire.

Mr. Sullivan:

Q. Mrs. Calhoon, do I pronounce the name correctly?

A. That's correct.

Q. May I inquire as to your business or occupation, please?

A. I'm a homemaker.

Q. And is there a Mr. Calhoon?

A. There is.

Q. May I inquire as to his business, please?

A. He is a teacher.

Q. Teacher. Did you tell the Court that you had had previous experience as a trial juror in criminal cases?

A. I have not.

[fol. 755] Q. None. Thank you. Do you any children?

A. I have.

Q. You know from what you have heard in this courtroom that Mrs. Duncan is charged in this indictment with the murder of one Olga Duncan, do you not?

A. Yes.

Q. And is there anything about the nature of that charge that would cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. Assuming that the evidence in this case should disclose that Olga Duncan was the daughter-in-law of Elizabeth Duncan, would that fact cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. Assuming that the evidence should disclose that Olga Duncan at the time she came to her death was then pregnant, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. Have you or has any member of your family or any relative of yours or anyone near and dear to you ever been the victim of a crime of passion or violence?

A. No, sir.

Q. Or ever had occasion to be a witness against any person charged with such an offense?

[fol. 756] A. Not to my knowledge.

Q. Not to your knowledge. Have you ever been connected in any manner with any law enforcement agency?

A. Not I.

Q. Has any relative of yours or anyone near and dear to you, insofar as you know, ever been connected with any law enforcement agency?

A. Yes, sir.

Q. Is that a close relative?

A. My husband.

Q. Your husband?

A. Yes.

Q. And in what capacity was he connected with a law enforcement agency?

A. He was a police officer.

Q. A police officer. Was that in this County?

A. No, sir.

Q. Some other. Was that in California?

A. Los Angeles.

Q. In Los Angeles. Well, it is possible that law enforcement officers may take the witness stand and testify in this case. Would the fact that your husband at one time had been himself a law enforcement officer cause you to give any greater credence to the testimony of a law enforcement officer than you would that of any other witness?

A. No, sir.

[fol. 757] Q. In other words, you feel that you could weigh and consider the testimony of a law enforcement officer by the same standard as you would that of any other witness; is that right?

A. I would, I would.

Q. And let's assume that Mrs. Duncan takes the witness stand and testifies as a witness in this case. Would you be apt to deny to her the benefit of her own testimony

merely because she happens to be accused of this crime?

A. No, sir.

Q. Do you feel that likewise you could weigh and consider her testimony by the same standards as you would that of any other witness?

A. Yes, that's right.

Q. You further understand from what you heard in the courtroom, do you not, that as Mrs. Duncan sits today the law clothes her with the presumption of innocence?

A. Yes.

Q. And that that presumption goes with her throughout this trial?

A. I understand that.

Q. Now, if you are accepted as a juror in this case, would you give to her the benefit of that presumption of the law?

A. I would.

Q. If you are accepted as a juror in this case [fol. 758] would you require the prosecution to prove to your satisfaction, to a moral certainty and beyond a reasonable doubt the guilt of Mrs. Duncan?

A. Yes.

Q. Do you subscribe to any of the local papers?

A. What do you mean by local? You mean Ventura papers?

Q. Well, papers that are published, let's say, in this County somewhere.

A. I do not take a County—any paper in this County.

Q. Pardon?

A. Not in this County.

Q. Not in this County?

A. No, sir.

Q. Los Angeles papers?

A. Yes, sir.

Q. Do you sometimes listen to news broadcasts from radio stations located here in Ventura?

A. No, sir, I don't get them.

Q. You can't get them?

A. No.

Q. You have got to listen to Los Angeles; is that it?

A. That's right.

Q. You don't get good reception in Simi Valley; is [fol. 759] that it?

A. Well, something happens.

Q. Do you sometimes listen to news broadcasts on television?

A. Yes, sir.

Q. Let me ask you this, Mrs. Calhoon: Have you read anything about this case?

A. I have.

Q. And in addition to what you read have you heard anything, heard it discussed?

A. Not in an analytical way.

Q. Not what?

A. Not in an analytical way.

Q. Not in an analytical way.

A. I had heard references to it, but it is not in an analytical way.

Q. You have just heard some statements concerning it?

A. That's right.

Q. Would that be fair to say?

A. That's right.

Q. Did you read any article in any newspaper which purportedly reported the testimony taken before the grand jury in this matter?

A. I'm not certain at this time whether I know of the grand jury, that material.

[fol. 760] Q. Did you read any article in any newspaper which purportedly reported a confession of one Augustine Baldonado?

A. Well, I cannot differentiate between the two persons. These names which I have heard mentioned over and over in court, I could not differentiate the testimony of the two. I know it only as a story as a whole.

Q. I see. You can't differentiate between Baldonado and Moya?

A. I could not.

Q. But you did read some article concerning a confession made by somebody?

A. That's right.

Q. In this case, and from what you have read concerning it you connect Baldonado and Moya with this particular case; is that right?

A. That is right.

Q. And from what you read did you in any manner connect Elizabeth Duncan with this case?

A. Her name was mentioned.

Q. From what you read in any of these articles that you read did you read any statements wherein either Baldonado or Moya accused Mrs. Duncan of participation in this offense?

A. Yes, sir.

Q. About how many people did you hear talking about this case?

[fol. 761] A. Oh, I would say six or less, probably around six.

Q. And you do not know whether those people had any personal knowledge concerning the matter that you heard them discuss?

A. I am of the opinion that not one of those persons had personal knowledge.

Q. Do you know whether or not any of those persons that you heard discuss this case are likely to be witnesses in this case?

A. Of course, I don't know it to be a fact, but I think not.

Q. I take it you would be pretty much surprised if they were; is that it?

A. I would.

Q. From what you read and heard discussed concerning this case did you, yourself, form any opinion with respect to the guilt or innocence of Mrs. Duncan?

A. I did.

Q. And the opinion which you formed, Mrs. Calhoon, was that an opinion that was adverse to Mrs. Duncan?

A. No, sir.

Q. Let's assume that you were the person who was on trial here today charged with this identical offense and that you wanted to be tried before a jury of 12 men and women who would be absolutely fair, unbiased and unprej-

[fol. 762] udiced. Would you be willing to trust your fate to 12 men and women of your present frame of mind?

A. I think I would.

Q. Do you know of any reason why you could not give to Mrs. Duncan a fair and impartial trial?

A. Not at this time.

Mr. Sullivan: Thank you, Mrs. Calhoon. We will pass for cause.

Mr. Gustafson:

Q. Mrs. Calhoon, did I misunderstand or did you say that you had formed an opinion about the guilt or innocence of Mrs. Duncan?

A. I said my opinion was not adverse. He asked me——

Q. No, did you form an opinion?

A. My opinion is that the woman is innocent until she is proved guilty.

Q. I see. I mean is this opinion, Mrs. Calhoon, based on the fact that everyone is presumed to be innocent until proven guilty?

A. From the time I first read this story—I can't accept a newspaper story as conclusive evidence.

Q. No. All right, now, what I want to know, Mrs. Calhoon, is if from the evidence presented here in court I should convince you that beyond a reasonable doubt she is guilty, Mrs. Duncan is guilty, would you hesitate to vote her guilty?

[fol. 763] A. I would not.

Q. Similarly, if I should fail to prove that to your satisfaction, you wouldn't hesitate to vote her not guilty?

A. That's correct.

Q. Now, rather than go over question by question all of the matters that I have heretofore covered with the jurors, the prospective jurors, let me just ask you two things: One, with respect to the death penalty, do you have any reservations of the kind that I mentioned in my previous questions to the jurors?

A. I wonder whether I am completely clear on that. That is not a personal thing that we vote. We vote a law; is that correct?

Q. You vote what?

A. What do you call it? It is a law, in other words, and if a person is found guilty, we have a law that says he must be punished in this particular manner?

Q. No, no. That is just it, Mrs. Calhoon, it will be a personal thing that is in your sole discretion, in the sole discretion of the jury and with respect to voting on this in your own individual, sole discretion.

In other words, if the defendant is found guilty of murder in the first degree, then and only then will there be a separate proceeding following the trial on the issue of [fol. 764] guilt—there will be some additional evidence presented, presumably, for your consideration and to the penalty. There may or may not be additional evidence, but, at any rate, there will be a separate period of deliberation in voting on the issue of penalty if she is found guilty of murder in the first degree. Then the choice will be yours individually and collectively as jurors whether the penalty should be life imprisonment or death, and that will be at your discretion. There will be no rules of law telling you that under certain circumstances the death penalty must be applied, nor will there be any that say under certain circumstances life imprisonment must be applied. This is a matter for your determination.

So, therefore, my questions had relation to whether you already had some preconceived notion that regardless of the circumstances you would never apply the death penalty fo a woman?

A. No, sir.

Q. Or that you had any preconceived notion that regardless of the circumstances you would not apply the death penalty to a first degree murderer if, in fact, that first degree murderer didn't personally do the killing, but employed somebody else to do it?

A. I don't have that preconceived.

Q. You don't. I take it you don't have any conscientious opinion concerning the death penalty that would preclude from voting guilty in the first place?

[fol. 765] A. No, sir.

Q. All right. Now, then, with respect to the other matter that is other than the penalty, the following of the rules of law laid down by the Judge and the judging of the evidence in court here, the ability to weigh and consider the evidence and to try to ascertain what the truth is, all those questions of that nature that I asked the other prospective jurors, is there anything in those that bothered you?

A. No, sir.

Q. That you might have answered differently than the remaining jurors in the box?

A. No.

Mr. Gustafson: Pass for cause.

The Court: All right, the peremptory is with the People.

Mr. Gustafson: I will accept the jury as now constituted.

The Court: The peremptory is again with defendant.

Mr. Sullivan: May I have a moment, Your Honor?

The Court: Yes.

Mr. Sullivan: We will excuse Mrs. Mary Colborn, Juror Number Nine.

The Court: Call another name.

The Clerk: Clara H. Dodds, D-o-d-d-s, Mrs. Clara H. Dodds.

[fol. 766] The Court: Where do you live, Mrs. Dodds?

The Prospective Juror: I live in Ventura.

The Court: You have been here long enough so that you know what this case is all about?

The Prospective Juror: Yes, I have.

The Court: Is that right?

The Prospective Juror: Right.

The Court: You heard everything that went on here?

The Prospective Juror: Right.

The Court: In this case the defendant, as you know, has been charged with murder. If she should be convicted, that conviction could carry with it the death penalty. Do you have any conscientious scruples against the death penalty?

The Prospective Juror: No, sir.

The Court: What?

The Prospective Juror: No, sir.

The Court: All right, you may inquire.

Mr. Sullivan: Your Honor——

The Court: I am going to run a little late. We have got a chance to get a jury.

Mr. Sullivan: All right.

Q. Mrs. Dodds, may I inquire as to your business or occupation, please?

A. I am employed by Ventura County Weights and Measures Department.

[fol. 767] Q. The Weights and Measures Department of Ventura County?

A. Right.

Q. Is there a Mr. Dodd?

A. I am a widow.

Q. You are a widow. Do you understand from what you have already heard in the courtroom that Mrs. Duncan is charged with the murder of one Olga Duncan, do you not?

A. Yes, sir.

Q. If the evidence in this case should disclose that Olga Duncan was the daughter-in-law of Mrs. Duncan, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. If the evidence in this case should disclose that Olga Duncan at the time she came to her death was then pregnant, would that cause you to entertain any bias or prejudice?

A. No, sir.

Q. Against her?

A. No, sir.

Q. Did the Court ask you if you had previous experience as a trial juror?

A. No, he didn't, but I haven't.

Q. You haven't?

A. No.

[fol. 768] Q. Have you or has any member of your family or anyone near and dear to you ever been connected with any law enforcement agency?

A. No, sir, not to my knowledge.

Q. Not to your knowledge. Are you personally acquainted with Mr. Gustafson?

A. No, sir.

Q. Are you acquainted with any of the deputies in his office or members of his staff?

A. I have talked to members of Mr. Gustafson's staff in the course of my work at our department, yes, over the phone only.

Q. Only on the telephone?

A. Yes.

Q. Well, the fact that you might from time to time have occasion to discuss business matters over the phone with members of his staff, that wouldn't prevent you from acting fairly and impartially in this matter, would it?

A. No, sir.

Q. It wouldn't influence your verdict one way or the other?

A. No.

Q. If accepted as a juror in this case; is that right?

A. No.

[fol. 769] Q. Now, it might be possible that law enforcement officers may testify as witnesses in this case. If they should do so, would you be apt to give any greater credence to their testimony than you would that of any other witness merely because they happened to be law enforcement officers?

A. No, sir.

Q. And in the event that Mrs. Duncan should see fit to take the witness stand and testify in this case, would you be apt to deny to her the benefit of her own testimony merely because she happens to be the defendant in this matter?

A. No, sir.

Q. You feel that you could weigh and consider her testimony by the same standards as you would that of any other witness; is that correct?

A. After the evidence was presented, yes.

Q. You understand from what you heard in the courtroom that the law presumes her to be innocent of this charge, do you not?

A. I understand that.

Q. And that that presumption goes with her throughout the trial?

A. Yes, sir.

Q. And if you are accepted as a juror in this case, do you feel that you can accord to her the benefit of that presumption of the law?

[fol. 770] A. Yes, sir.

Q. If you are accepted as a juror in this case, would you require the prosecution to prove to your satisfaction, to a moral certainty and beyond a reasonable doubt the guilt of Mrs. Duncan?

A. I would.

Q. Do you feel that you could keep your mind open respecting the guilt or innocence of Mrs. Duncan until you have heard all of the evidence in the case, not only that offered by the prosecution, but any evidence offered by the defense as well?

A. Yes, sir.

Q. Do you subscribe to any of the local papers?

A. Yes, sir.

Q. Do you ever listen to news broadcasts on the radio?

A. I do.

Q. And sometimes listen to the local broadcasting station?

A. Every morning.

Q. Every morning. You are one supporter, anyway. Do you ever listen to any news broadcasts on television?

A. Yes, sir.

Q. Have you read anything in the newspapers concerning this case?

A. I have.

[fol. 771] Q. And have you heard things concerning this case on radio or television broadcasts?

A. Yes, sir.

Q. Did you ever read any article in any newspaper which purportedly reported the testimony of witnesses who were called before the grand jury?

A. Not in its entirety, no.

Q. You read part of it?

A. I read part of it.

Q. Part of it. Did you ever read any article in any newspaper which purportedly reported the confession of one Augustine Baldonado?

A. Not in its entirety. I read——

Q. Just part of that also?

A. I believe that what it said, yes.

Q. Did you ever read any article in the newspaper which purportedly reported the confession of one Luis Moya?

A. Yes.

Q. Now, in any of these articles which you read did you read anything to the effect that Baldonado or Moya or one of those men accused Mrs. Duncan of participation in this crime?

A. Yes, I read that.

Q. Did you ever hear any radio broadcast which purportedly related a confession of Luis Moya?

A. No, I don't believe I heard that, no.

[fol. 772] Q. You don't believe so?

A. No.

Q. In addition to what you read concerning the case did you discuss it with any other people, with any people?

A. I have.

Q. And heard it discussed also?

A. I did.

Q. By other persons?

A. Yes.

Q. Did you hear it discussed by many people?

A. Co-workers.

Q. Co-workers. Could you give us an approximate idea as to how many people you discussed it with or heard discuss it?

A. Well, that is very difficult to do. It was just a general topic of conversation. I would say dozens.

Q. Dozens?

A. Yes.

Q. And the people that you heard discussing this case, do you know whether or not they had any personal knowledge concerning the matters that you heard them discuss?

A. I don't know that. To my knowledge, no.

Q. You don't know. Do you have any knowledge as to whether any of these people that you heard discuss this case might possibly be witnesses in this matter?

[fol. 773] A. Not to my knowledge. I wouldn't know that personally.

Q. You wouldn't know whether they were or not?

A. No.

Q. What you heard these other people say concerning this case, did you believe that to be true?

A. Well, I didn't accept it one way or the other. It was just a topic of conversation.

Q. Just a topic of conversation?

A. Yes.

Q. Did you have any reason to disbelieve them.

A. No, nor to believe them.

Q. From what you read about this case or heard discussed about this case did you, yourself, form any opinion concerning the guilt or innocence of Mrs. Duncan?

A. Yes, I formed an opinion.

Q. Was that opinion one that was adverse to Mrs. Duncan?

A. I would say so, yes.

Q. You formed an opinion that she was guilty of this offense?

A. Yes. From what I read in the papers I formed that opinion, yes.

Q. And do you still hold that opinion?

A. I have heard no testimony to——

Q. What?

[fol. 774] A. Yes. I still hold that opinion.

Q. In other words, as you sit in the jury box here today your opinion is that she is guilty of this offense?

A. Yes, sir.

Q. Is that opinion likely to affect your verdict in this matter?

A. No, I wouldn't think so because I think I would try to put that aside in a matter of such gravity.

Q. Could you put it aside?

A. I'm sure I could.

Q. You don't think it would have any bearing whatsoever on your verdict in this matter?

A. I don't think so.

Q. It is pretty hard to put an opinion aside.

A. I know it's hard, but I realize that.

Q. Let's say that you, yourself, were the person on trial here today charged with this offense and you wanted to be tried before 12 people who would be absolutely unbiased and unprejudiced and who would render a fair and impartial verdict. Would you be willing to trust your fate to 12 people of your present frame of mind?

A. No, sir, I wouldn't.

Q. If you were to do that, you don't feel that you would get a fair shake; is that it?

A. Not in my present frame of mind, no.

Q. Not in your present frame of mind?

[fol. 775] A. No, sir.

Q. You wouldn't want yourself to be tried before people of that frame of mind?

A. No, sir.

Q. And you wouldn't want anyone that was near and dear to you to be tried——

A. No, sir.

Q. —before a jury of your present frame of mind?

A. Not my present frame of mind, no.

Q. I know you want to be fair.

A. I want to be fair about it, yes.

Q. But you don't feel that you could be because of your present frame of mind; is that right?

A. I didn't say that.

Q. Well, could you?

A. I realize it would be my duty and I would do my utmost and I think perhaps I could, but you are talking about my present frame of mind.

Q. That's right.

A. Not in my present frame of mind.

Q. That is what I am talking about, your present frame of mind.

A. That's right.

Q. You think you could completely set aside your present opinion with respect to the guilt of Mrs. Duncan in arriving at a verdict in this case?

[fol. 776] A. I think I could, yes.

Q. You would at least try?

A. I would try very hard.

Q. Let me ask you this: If your opinion with respect to Mrs. Duncan such that it would require some evidence on the part of the defense to remove?

A. Yes, I think it would.

Q. You think it would to some extent shift the burden on our shoulders?

A. No, I wouldn't say that. I would have to hear all of the evidence. I wouldn't say the burden would be on your shoulders, no, sir.

Q. But you think we would have to present some evidence?

A. You would have to have some evidence, I think. I know that I'm not—that she is presumed to be innocent, I realize that.

Q. That's right.

A. But in the frame of mind that I am now I wouldn't—I would like evidence.

Q. To remove it?

A. Yes, to remove it.

Mr. Sullivan: I am going to charge this juror for cause, your Honor.

Mr. Gustafson: Mrs. Dodds, I think some of the confusion here or, at least, I think there may be some confusion by [fol. 777] reason of failure to distinguish your present opinion from your present frame of mind. Your present opinion is that Mrs. Duncan is guilty?

A. From what I have read.

Q. From what you have read and, of course, unless you hear something to the contrary, that opinion will continue?

A. That's right.

Q. Now, the real question is: Can you, notwithstanding that opinion which, of course, you still retain until there is something to change it, can you, notwithstanding that opinion, try the case as a juror fairly and impartially? This means that would you follow the instructions of the Judge and not vote her guilty even though from what you read in the paper you believe she is guilty, would you follow the instructions of the Judge and vote her not guilty if I fail to prove the case in court here beyond a reasonable doubt?

A. Yes.

Q. You would do that?

A. I would do that.

Q. Now, similarly, if the Judge tells you that she is presumed to be innocent for the purposes of the verdict unless *unless* and until she is proved guilty by me beyond a reasonable doubt, you would accord her the benefit of that presumption, would you not?

A. I would.

Q. And so if I failed to introduce any evidence whatever, or similarly, introduced some evidence but [fol. 778] you didn't believe a word of it, then you would vote her on the verdict not guilty even though your opinion from reading the papers was still that she was guilty; is that right?

A. That's right.

Q. Now, you can then follow the instructions of the Judge in this respect; is that true?

A. Yes, I can.

Q. And you will follow the instructions of the Judge in this respect?

A. I will.

Q. So that with respect to your frame of mind as opposed

to your opinion of guilt, with respect to your frame of mind of how you approach this case as a juror, you will act fairly and impartially, will you not?

A. I will.

Q. And you will follow all of the instructions given by the Court notwithstanding any opinion you might have?

A. Yes.

Q. And you will not allow anything that you read in the newspaper or heard discussed to enter into your verdict?

A. No, sir.

Q. And you will not allow your opinion to influence your verdict?

A. No, sir.

The Court: You don't mean to say that you would require [fol. 779] the defendant to prove anything, do you? The defendant is not required to prove anything under the law.

The Prospective Juror: I realize that, Judge Blackstock, yes.

The Court: But you said ago that you would need some testimony from the defendant.

Mr. Gustaffson: Your Honor, the question she answered was that she would need some evidence to remove her opinion.

The Prospective Juror: Opinion.

The Court: But she indicated at one time that she would require some evidence from the defendant to remove that opinion. Didn't you?

The Prospective Juror: That's right, I said that.

The Court: You did that, didn't you?

The Prospective Juror: I said that.

The Court: You still feel that way?

The Prospective Juror: Yes, sir.

The Court: This is the last challenge. If he had to use a challenge on this juror, it would be his last challenge. I think I will allow this challenge. You are excused. Call another name.

The Clerk: Earl, initial "G", Bond—B-o-n-d, Earl G. Bond.

The Court: Well the jury box is full now. The Court is about to adjourn until tomorrow morning at 10:00 o'clock. Remember—wait a minute, wait a minute. While I am [fol. 780] not legally required to admonish you at this time,

I am admonishing you. Please do not discuss this case among yourself or with anyone else and do not form or express any opinion about anything connected with this trial until the case is finally submitted to the jury.

You are excused, all of you, until tomorrow morning at 10:00 o'clock.

(Whereupon at 5:00 o'clock P.M. the Court adjourned proceedings until 10:00 o'clock A.M., February 20, 1959.)

[fol. 781] Ventura, California, February 20, 1959. 10:00 o'clock A. M.

The Court: All right. I think there was one prospective juror that we hadn't examined at all, isn't there?

Mr. Gustafson: Yes. Mr. Bond.

The Court: Which one?

Mr. Gustafson: Mr. Bond.

The Court: Number what?

Mr. Gustafson: Number Nine.

The Clerk: Number Nine.

The Court: Number Nine. Where do you live?

The Prospective Juror: Moorpark.

The Court: How long have you lived in Ventura County?

The Prospective Juror: Twenty-five years.

The Court: Twenty-five?

The Prospective Juror: Yes, sir.

The Court: Have you ever served on a jury?

The Prospective Juror: No, sir.

The Court: You have been here in the courtroom long enough so that you know what this case is all about?

The Prospective Juror: Yes, sir.

The Court: You heard everything that has been said here?

The Prospective Juror: Yes.

The Court: Is there any reason why you couldn't be [fol. 782] fair and just as a juror, if you should be selected as a juror in this case?

The Prospective Juror: No.

The Court: In this case the defendant's charged with murder. That offense could carry with it the death penalty. Do you have any conscientious scruples against the death penalty?

The Prospective Juror: I have.

Mr. Gustafson: Challenge for cause.

The Court: All right, you are excused.

(The prospective juror was excused.)

The Court: Call another name.

The Clerk: Mrs.—"B"—Jewel—J-e-w-e-l—Berch—B-e-r-c-h. Mrs. B. Jewel Berch.

The Court: Where do you live, Mrs. Berch?

The Prospective Juror: Moorpark.

The Court: How long have you lived in Ventura County?

The Prospective Juror: Eight and a half years.

The Court: How long?

The Prospective Juror: Eight and a half years.

The Court: Did you ever serve on a jury in a criminal case?

The Prospective Juror: Not in a criminal case.

The Court: You have in a civil case?

The Prospective Juror: Yes, sir.

The Court: Do you know of any reason why you [fol. 783] shouldn't serve on this jury?

The Prospective Juror: No, sir.

The Court: You have been here all morning? I mean you have been here for several days and you know what the case is all about?

The Prospective Juror: Yes, sir.

The Court: Do you know the defendant, Elizabeth Duncan, is charged with murder?

The Prospective Juror: Yes, sir.

The Court: And that particular offense, if she should be convicted, it could carry the death penalty. Do you have any conscientious scruples against the death penalty?

The Prospective Juror: No, sir.

The Court: All right, you may inquire.

Mr. Sullivan:

Q. It is Mrs. Berch?

A. Yes, sir.

Q. And, Mrs. Berch, may I inquire as to your business or occupation?

A. I am a homemaker and I also help on the ranch.

Q. And is there a Mr. Berch?

A. Yes, sir.

Q. And his occupation?
A. Poultryman.
Q. Poultryman?
A. Yes, sir.
Q. You have a family, children?
[fol. 784] A. Yes, sir.
Q. You understand from what you have already heard in the courtroom, that my client, Elizabeth Duncan, is charged with the murder of one Olga Duncan, do you not?
A. Yes, sir.
Q. Is there anything about the nature of that charge that would cause you to entertain any bias or prejudice against Mrs. Duncan?
A. No, sir.
Q. If the evidence in this case should disclose that Olga Duncan was the wife of Frank Duncan, Mrs. Duncan's son, would that cause you to entertain any bias or prejudice against Mrs. Duncan?
A. No, sir.
Q. Assuming that the evidence in this case should disclose that at the time Olga Duncan came to her death, she was then pregnant, would that fact cause you to entertain any bias or prejudice against Mrs. Duncan?
A. No, sir.
[fol. 785] Q. Have you or has any member of your family or any relative or anyone near and dear to you ever been the victim of a crime of assault or passion?
A. No, sir.
Q. Or ever had occasion to be a witness against any person charged with a similar offense?
A. No, sir.
Q. Have you ever been connected with any law enforcement agency?
A. No, sir.
Q. Are you acquainted with Mr. Roy Gustafson, the District Attorney of this County?
A. No, sir.
Q. Are you acquainted with any of the deputies in his office or members of his staff?
A. Not to my knowledge.
Q. Has any relative of yours or anyone near and dear

to you ever been connected with any law enforcement agency?

A. Not that I know of.

Q. Assuming that some law enforcement officer should be called as a witness in this case, would you be apt to give any greater credence to the testimony of such a witness than you would that of any other witness merely because he happens to be a law enforcement officer?

A. No, sir.

Q. Do you feel that you could weigh and consider [fol. 786] the testimony of such a witness by the same standard as you would that of any other witness?

A. Yes, sir.

Q. Now, assuming further that Mrs. Duncan should take the witness stand and testify as a witness in her own behalf, would you be apt to deny her the benefit of her own testimony merely because she happens to be the defendant in this case?

A. No, sir.

Q. You understand from what you have already heard said in this courtroom that Mrs. Duncan as she sits in court today is presumed to be innocent of the offense charged in this indictment, do you not?

A. Yes, sir.

Q. You understand further that that presumption of innocence goes with her throughout the trial?

A. Yes, sir.

Q. Do you feel that if you were accepted as a juror in this case, that you could accord to here the benefit of that presumption of the law?

A. Yes, sir.

Q. Is there any doubt in your mind about it?

A. No.

Q. If you are accepted as a juror in this case, would you require the prosecution to prove to your satisfaction, to a moral certainty and beyond a reasonable doubt, the [fol. 787] guilt of Mrs. Duncan?

A. No, sir.

Q. You would not require them to do that?

A. The District Attorney has to prove——

The Court: She didn't understand.

Mr. Sullivan: Maybe you didn't understand my question.

The Court: The prosecution, that is the District Attorney.

The Prospective Juror: Oh, pardon me. Would you repeat?

Mr. Sullivan: He represents the People in this case.

A. Yes.

Q. If you are accepted as a juror in this case, would you require the People—this case is prosecuted in the name of the People of the State of California—would you require the prosecution to prove to your satisfaction, to a moral certainty and beyond a reasonable doubt the guilt of Mrs. Duncan?

A. Yes.

Q. In other words, if you have a reasonable doubt about her guilt, you wouldn't hesitate to vote her not guilty; is that it?

A. Yes, sir.

Q. You feel that you would be willing to accept the law from the Court and attempt to apply that law to the evidence in this case irrespective of whether you thought it was good law or bad law?

A. I don't quite understand you.

[fol. 788] Q. Well, after you have heard all of the evidence in this case and it is argued by both sides, the Court is going to instruct the jury as to the law applicable to this case. You have to be guided by the law in weighing the evidence in this case, and you must accept the law from his Honor and endeavor conscientiously to apply it to the evidence in this case. Do you think that you would be able to do that if accepted as a juror here?

A. Yes, sir.

Q. Would you accept whatever the Judge tells you the law is irrespective of whether you thought the law should be some other way around, is that right, whether you believed the law was good or bad?

A. I would.

The Court: Listen, the law is that you must accept the——

The Prospective Juror: Yes.

The Court: —instructions of the Court.

The Prospective Juror: Yes, that's what I was going to say, I would.

The Court: Would you do that?

The Prospective Juror: Act under the instructions of the Court.

Mr. Sullivan:

Q. All right. Let's assume that you are accepted as a juror in this case. You have heard all of the evidence; that is, not only that presented by the People but the evidence presented on behalf of Mrs. Duncan, as well. You have [fol. 789] received instructions on the law from his Honor. You retire to the jury room. You fully and fairly have discussed this evidence with your fellow jurors. You have endeavored conscientiously to weigh that evidence in the light of the law as given to you by the Court, and you then say to yourself, "Well, I honestly and conscientiously have a reasonable doubt as to whether Mrs. Duncan is guilty of this charge." Under those circumstances would you hesitate to vote for a verdict of not guilty?

A. No.

Q. And would you continue to do that so long as you did honestly and conscientiously entertain a reasonable doubt?

A. Yes.

Q. Would you continue to do that irrespective of how your fellow jurors may feel about the matter?

A. Yes, I would.

Q. Do you subscribe to any of the local newspapers?

A. Yes, I do.

Q. Do you sometimes have occasion to listen to news broadcasts on the radio?

A. Very seldom. We usually have the farm report at noon.

Q. And do you sometimes listen to news broadcasts on television?

A. Very seldom.

[fol. 790] Q. Have you been a subscriber to one of the local papers for some time past?

A. Yes.

Q. At least as far back as November and December of last year?

A. Yes, sir.

Q. Do you recall whether or not you have ever read anything about this case?

A. I read some at first.

Q. Do you recall whether or not you ever read any article in any newspaper which purported to report the testimony taken before the grand jury in this matter?

A. No, I did not.

Q. You didn't read it?

A. No.

Q. Do you recall whether or not you have read any article in any newspaper which purported to report a confession by one Augustine Baldonado?

A. I read the headlines on one but I do not know which one it was. I wasn't too interested in the case and I didn't really go into it.

Q. Well, from what you read in the newspaper, you became aware of the fact that either Augustine Baldonado or Luis Moya had made a confession, is that right?

A. Yes.

Q. Now, you don't know which one?

[fol. 791] A. No, I don't remember which one it was.

Q. All right. Well, in addition to what you read in the paper, did you hear any news broadcasts on the radio concerning this case?

A. No, I didn't.

Q. In addition to what you read in the newspaper, did you discuss this case with anyone?

A. We talked about it. We didn't—I didn't go into any details or anything, because I didn't read enough about it.

Q. It was mentioned, is that it?

A. Yes.

Q. And is that among your friends?

A. Yes.

Q. And acquaintances?

A. Yes.

Q. Could you tell me approximately how many people you discussed this case with or heard discuss it?

A. I don't know. About eight or 10, I imagine.

Q. Now, you do not know whether the things which you heard other people discuss about this case were matters that they knew of their own personal knowledge or not, do you?

A. I think they were all from what they read in the paper.

Q. Well, you say you think. Do you know?

[fol. 792] A. No, I don't know definitely.

Q. So you naturally wouldn't know whether it was matters that they knew of their own personal knowledge?

A. No.

Q. Did you believe the things that you heard these people discuss about this case?

A. I really don't know. I don't know how I can explain it.

Q. Well, let's say that you had no reason to disbelieve it. Is that it?

A. No, I didn't.

Q. All right. And as a result of what you read or what you discussed or heard discussed concerning this case, did you form any opinion with respect to the guilt or innocence of Mrs. Duncan?

A. Yes, I did.

Q. Now, was that opinion that you formed an opinion that was adverse to Mrs. Duncan?

A. Yes.

Q. I take it then that the opinion which you formed was one that Mrs. Duncan was guilty of this offense, is that correct?

A. Yes.

Q. Did you read any newspaper articles concerning any other crimes that were charged against Mrs. Duncan?

A. No, I didn't.

[fol. 793] Q. Only this one insofar as this murder charge is concerned, is that correct?

A. Yes.

Q. Well, now, this opinion which you formed, that Mrs. Duncan was guilty of this offense, do you still have that opinion?

A. Yes, I do.

Q. And is that opinion such that it would require some evidence on the part of the defense to overcome?

A. That is on your part?

Q. That is right.

A. No, sir.

Q. You don't think that we would be placed in somewhat of a handicapped position or have some burden to

me in this case in order to overcome the opinion which you now have?

A. Well, as I understand it, Mr. Gustafson has to prove she is guilty.

Q. That is right.

A. And if he doesn't prove she is guilty, then she is innocent. Am I right?

Q. Then what?

Mr. Gustafson: Then she is innocent.

The Court: Well, Mrs. Berch, the prosecution must prove the defendant guilty beyond a reasonable doubt before she can be convicted.

[fol. 794] The Prospective Juror: Yes.

The Court: If the prosecution fails to prove her guilty beyond a reasonable doubt, you would not convict her, in spite of any opinion that you might have, is that right?

The Prospective Juror: That is right.

Mr. Sullivan:

Q. You feel that this opinion which you now have concerning Mrs. Duncan's guilt, is one that is likely to influence your verdict in this matter, if you are called upon to act as a juror?

A. No, sir.

Q. Do you think that you could completely set that opinion aside and decide her guilt or innocence solely from the evidence that you hear in this courtroom?

A. Yes, sir.

Q. Let me ask you this: Suppose that you yourself were in court here today, charged with this identical offense, that you wanted to be tried before a jury composed of 12 men and women who are absolutely unfair—unbiased and unprejudiced in any way.

Mr. Gustafson: Mr. Sullivan, you said "absolutely unfair."

The Court: Well, he substituted the word "unbiased" but there was a little confusion. Better reframe your question.

Mr. Sullivan: I will reframe it so that there will be [fol. 795] no question about it.

Q. Let's assume that you yourself were on trial in this courtroom today, charged with the identical offense that is charged against Mrs. Duncan; that is, this alleged murder of Olga Duncan, and you wanted to be tried before a jury composed of 12 men and women who are absolutely unbiased and unprejudiced, and all you wanted them to do was to return a fair and impartial verdict. Would you be willing to trust your fate to the hands of 12 men and women of your present frame of mind?

A. Yes, sir.

Q. You feel that if you did that, that you would be satisfied with the result, regardless of what it might be, is that right?

A. Yes, sir.

Q. Do you know of any reason whatsoever why you cannot give to Mrs. Duncan a fair and impartial trial?

A. No, I don't.

Mr. Sullivan: All right. Thank you, Mrs. Berch.

The Court: Pass for cause?

Mr. Sullivan: Yes, Your Honor.

The Court: I asked if he passed for cause, and he said, "Yes."

Mr. Gustafson:

Q. Mrs. Berch, you don't know Mr. Sullivan, Mr. Frank Duncan or Mrs. Elizabeth Duncan, do you?

A. No, I don't.

[fol. 796] Q. With respect to the evidence in this case, I think you probably know by now from questions previously asked, that there is likely to be a conflict in the evidence and that you are going to be called, if you sit as a juror, to resolve or attempt to resolve that conflict and to decide on the basis of conflicting evidence what the true facts are. What I want to know from you now, Mrs. Berch, is whether, since I have to prove this case in order to get a verdict of guilty, prove Mrs. Duncan guilty beyond a reasonable doubt, whether the mere fact that there might conflicting statements by two different witnesses on the witness stand would, in and of itself, cause you to say, "Well, automatically there is a reasonable doubt and I can't find her guilty"?

A. No.

Q. So that you would do your conscientious best to try and weigh the evidence according to the rules given to you by Judge Blackstock and arrive at the truth?

A. Yes, sir.

Q. And as I understood it from your answer, you are willing to follow the law as given to you by Judge Blackstock?

A. Yes, sir.

Q. Whether you disagree with it or not?

A. Yes, sir.

Q. Now with respect to my proving Mrs. Duncan guilty, [fol. 797] you aren't going to require me to do more than the law requires, are you; that is, you are not going to require me to prove her guilty beyond any doubt whatever but only beyond a reasonable doubt?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Suppose now, Mrs. Berch, that during the course of this proceeding as you hear days of testimony here, that for some reason you have a great deal of sympathy for Mrs. Duncan at the time that you go to deliberate whether she is guilty or not guilty. Would you follow the instruction of Judge Blackstock that with respect to emotional matters like sympathy and passion and prejudice and so forth, you are to set them aside and not to be governed by them but you are to base your verdict solely on the evidence in the case?

A. Yes. Certainly on the evidence that was brought out.

Q. Yes, the evidence brought out in this case, and you are going to disregard, in determining the guilt or innocence of Mrs. Duncan, any passion, prejudice, sympathy or other matters, are you not?

A. Yes, sir.

Q. Now, I understood you to say to Judge Blackstock that you did not entertain any conscientious opinion con- [fol. 798] cerning the death penalty that would keep you from voting for a verdict of guilty of murder in the first degree, one of the two penalties for which is the death penalty, is that correct?

A. I don't object to the death sentence.

Q. Yes. And you don't have such an opinion that would keep you from voting for a verdict that would carry a death sentence?

A. What was that again?

Q. In other words, if I understand you correctly, you do not have any opinion regarding the death penalty; that is, adverse to it, that would keep you from voting for a verdict that might carry the death penalty with it?

A. No.

Q. Suppose now that you had, Mrs. Berch, a case in which you had found and your fellow jurors had found the defendant guilty of murder in the first degree and it is the type of case where, because of the circumstances of the crime and because of the defendant's background, you would think that the death penalty is the proper penalty to apply, but the defendant is a woman. Would you say to yourself, "Well, because it is a woman, I wouldn't apply the death penalty"?

A. Yes.

Q. Well, suppose that you had a similar case but the person who had been found guilty of murder in the first [fol. 799] degree, and therefore was subject to one of two penalties, either life imprisonment or death, suppose that person didn't personally do the killing but was guilty of murder in the first degree because that person had hired someone else to do the killing. Would you say under circumstances like that, that you would never apply the death penalty to someone who didn't personally kill?

A. That I wouldn't apply it?

Q. Yes.

A. No.

Q. In other words, would you say to yourself in that case you would never apply the death penalty?

A. No.

Q. So that in other words, you have no conscientious objections or opinion to the application of the death penalty to any first degree murder, if, in fact, you believe that it is the appropriate penalty?

A. No.

Q. Can you think of any reason, Mrs. Berch, why you couldn't give to my side of the case just as fair a trial as you could give to Mr. Sullivan's side of the case?

A. No.

Q. There would be no favoritism in your mind toward his side of the case because he happens to have a person sitting there as a client, a live person, whereas my client [fol. 800] is, as Mr. Sullivan just said, the People of the State of California?

A. No.

Mr. Gustafson: Pass for cause.

The Court: All right, the peremptory is with the People.

Mr. Gustafson: I will excuse Mr. Tucker.

(The prospective juror was excused.)

The Clerk: Susie—initial "J"—Peyton—P-e-y-t-o-n. Susie J. Peyton.

[fol. 801] The Court: Mrs. Peyton, are you related to the Coroner, Mr. Peyton?

A. No. The name is spelled differently.

The Court: Well, you have been here in the courtroom for several days and you know what this case is about?

The Prospective Juror: Yes.

The Court: Could you be entirely fair and impartial if you should serve on this jury?

The Prospective Juror: I would try.

The Court: What?

The Prospective Juror: I would try.

The Court: Well, you ought to know whether you could be fair or not. The answer is "Yes", is it?

The Prospective Juror: Yes.

The Court: The defendant in this case is charged with murder. That crime could carry the death penalty if she should be convicted. Do you have any conscientious scruples against the death penalty?

The Prospective Juror: Yes, I do.

The Court: What?

The Prospective Juror: Yes, I do.

The Court: All right.

Mr. Gustafson: Challenge for cause.

The Court: You are excused. Call another name.

The Clerk: Maurice, M-a-u-r-i-c-e, "E", Bisson, Bisson B-i-s-s-o-n.

[fol. 802] How do you pronounce that?

The Prospective Juror: Bisson.

The Clerk: Bisson.

The Court: Mr. Bisson, you have been here long enough so that you know that in this case the defendant is charged with the crime of murder?

The Prospective Juror: Yes.

The Court: That crime, if she should be convicted, could carry the death penalty. Do you have any conscientious scruples against the death penalty?

The Prospective Juror: Yes, I do.

The Court: What?

The Prospective Juror: Yes, I do.

Mr. Gustafson: Challenge for cause.

The Court: All right, you are excused. Call another name.

The Clerk: Mary Ellen Hall, H-a-l-l. Is it Mrs.?

The Prospective Juror: No.

The Court: Miss?

The Prospective Juror: Yes, sir.

The Court: Miss Hall, you have been here several days and you know that the defendant in this case is charged with the crime of murder. That crime could carry with it the death penalty if she were convicted. Do you have any conscientious scruples against the death penalty?

The Prospective Juror: No, sir.

[fol. 803] The Court: If you should be selected as a juror in this case, could you give the defendant a fair and impartial trial?

The Prospective Juror: Yes, sir.

The Court: All right, you may inquire.

Mr. Sullivan:

Q. Miss Hall, you reside in Ventura, do you?

A. Yes, sir.

Q. How long have you been a resident of Ventura County?

A. Two and a half years.

Q. May I inquire as to your business or occupation, please?

A. Yes, sir. I am secretary to the manager of the First Western Bank.

Q. Miss Hall, you understand from what you have already heard in the courtroom that my client, Elizabeth Duncan, is charged with the murder of one Olga Duncan, do you not?

A. Yes, sir.

Q. Is there anything about the nature of that charge that would cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. Assuming that the evidence in this case should disclose that Olga Duncan was the wife of Frank Duncan, Mrs. Duncan's son, would that cause you to entertain any bias or [fol. 804] prejudice against Elizabeth Duncan?

A. No, sir.

Q. Assuming that the evidence in this case should further disclose that at the time Olga Duncan came to her death she was then pregnant. Would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. Have you or has any relative of yours or anyone near and dear to you ever been the victim of a crime of assault or passion?

A. Yes, sir.

Q. Was that yourself or—

A. No, sir.

Q. —some relative?

A. No, sir.

Q. A fellow employee?

A. No, sir, a dear friend, sorority sister, was murdered.

Q. Was that in recent years?

A. Yes, sir.

Q. Was that here in Ventura County?

A. Yes.

Q. This friend of yours, you say she was a dear friend of yours?

A. Yes, sir, a sorority sister.

Q. A sorority sister. Were you called upon to be——

[fol. 805] A. No, sir.

Q. —a witness in that case?

(Prospective juror shakes head negatively.)

Q. Well, the fact that this unfortunate experience occurred with this dear friend of yours, do you think that would bias or prejudice you in any way in sitting as a juror in a case where a person is charged with the offense of murder?

A. No, sir. There were entirely different circumstances.

Q. So that you feel absolutely certain that that unfortunate occurrence would in no way whatsoever influence your verdict as a juror in this case; is that correct?

A. Yes, sir.

Q. Now, have you ever been connected with any law enforcement agency?

A. No, sir.

Q. Has any relative of yours or anyone near and dear to you ever been connected with any law enforcement agency?

A. Yes, sir.

Q. Is that a relative or friend?

A. Relative.

Q. May I inquire as to how close the relationship is?

A. My sister is at the present time and my father was for many years.

Q. In what capacity is your sister now connected with [fol. 806] some law enforcement agency?

A. She is a policewoman.

Q. A policewoman?

A. Yes, sir.

Q. Here in Ventura?

A. No, sir.

Q. In California some place?

A. Yes, sir.

Q. And did you say your father was for many years?

A. Yes, sir, in another county.

Q. In another county?

A. Yes, sir.

Q. In this County—I mean in this State?

A. Yes, sir.

Q. I am sorry. Your father also was a police officer?

A. Yes. In conjunction with other work he was a Deputy Sheriff.

Q. Well, it may be that some Deputy Sheriffs might testify as witnesses in this case. If that should happen,

would you be apt to give any greater credence to their testimony because of the fact that you have a sister who is now a policewoman and your father at one time was a policeman, as well as a Deputy Sheriff at one time?

A. No, sir.

Q. Do you feel that you could weigh and consider the testimony of a law enforcement officer by the same stand-
[fol. 807] ards that you would that of any other witness?

A. Yes, sir.

Q. You have no preconceived notion that such a witness would be more apt to tell the truth than somebody else then; is that right?

A. No, sir.

Q. All right. You have no preconceived notion that the prosecution witnesses in a criminal trial have a monopoly on the truth, do you?

A. No, sir.

Q. Now, let's assume that Mrs. Duncan during the course of this trial should take the witness stand and testify as a witness in her own behalf. Would you be apt to deny to her the benefit of her own testimony merely because she happens to be accused of this offense?

A. No, sir.

Q. Do you think you could weigh and consider her testimony by the same standard as that of any other witness?

A. Yes, sir.

Q. You understand that as she sits in court today the law clothes her with the presumption of innocence?

A. Yes.

Q. And that that presumption goes with her throughout this entire trial?

A. Yes.

Q. Do you feel that if you are accepted as a juror in
[fol. 808] this case, you could accord to her the benefit of that presumption?

A. Yes, sir.

Q. If you are accepted as a juror in this case, would you require the prosecution to prove to your satisfaction, to a moral certainty and beyond a reasonable doubt the guilt of Elizabeth Duncan?

A. Yes, sir.

Q. If after a full and fair consideration of all of the evidence and the weighing of that evidence in the light of the instructions that will be given to you by the Court, you then conscientiously entertain a reasonable doubt as to her guilt, would you hesitate to resolve that doubt in her favor and vote for a verdict of not guilty so long as you entertain a reasonable doubt about it?

A. That's right, a reasonable doubt.

Q. And you would do that irrespective of how your fellow jurors might feel about it?

A. Definitely.

Q. Now, do you subscribe to any of the local papers?

A. Yes, sir.

Q. And do you ever listen to newscasts on the radio?

A. Occasionally.

Q. Do you ever listen to newscasts on television?

A. Yes, sir.

Q. Have you been a subscriber to the local paper for [fol. 809] some time past?

A. Since I have been in this County, sir, yes, sir.

Q. So that is at least as far back as December——

A. Yes.

Q. —November and December of last year; is that right?

A. Yes.

Q. Have you read anything in any newspaper concerning this case?

A. Yes, sir.

Q. Did you read any article in any newspaper which purported to report the testimony taken before the Grand Jury in this matter?

A. Yes, sir, I recall seeing something about it.

Q. Do you recall having read any article in any newspaper which purported to report a confession of one Augustine Baldonado?

A. Yes.

Q. Did you read any article in any newspaper which purported to report a confession of one Luis Moya?

A. Yes, sir.

Q. Did you hear any radio broadcast which purported to report a confession of one Luis Moya?

A. I don't recall hearing it on the radio.

Q. You don't recall that. Did you read any article in any newspaper which purported to report any statements [fol. 810] concerning this case which were given out by Mr. Gustafson, the District Attorney?

A. Yes, I recall seeing it.

Q. Incidentally, are you acquainted with Mr. Gustafson?

A. No, sir.

Q. Or any of his deputies or any of the members of his staff?

A. I know by sight a number of Deputy Sheriffs in the County. They are customers.

Q. But you have no independent recollection of being acquainted with any of the gentlemen on Mr. Gustafson's staff?

A. No, sir, not to my knowledge.

Q. Well, in addition to what you read and heard on the radio concerning this case did you discuss it with anyone?

A. Well, yes, sir. Naturally, when the case was the first in the papers I believe everyone was more or less discussing it. Not in any great detail.

Q. And in addition to have discussed it did you hear other people discuss this case?

A. Oh, yes, sir.

Q. Can you tell me just approximately how many people you discussed this case with or heard discuss it? Just roughly; I know you can't be exactly accurate.

A. Oh, a dozen or 15. That is a difficult question to answer.

[fol. 811] Q. Do you know whether any of these people that you heard discuss it; that is, whether or not the matter which you heard them mention concerning this case was matters that they knew of their own knowledge?

A. No, sir, I am sure it was just what they read in the paper.

Q. Did you believe the truth of what you heard these people say concerning this case?

A. I had no reason to believe one way or the other, sir.

Q. You had no reason to disbelieve them?

A. That's right.

Q. Is that it? Do you know whether or not any of those persons are likely to become witnesses in this case?

A. Not to my knowledge.

Q. I see, but from what you did read or hear or discussed or heard discussed concerning this particular case, did you form any opinion with respect to the guilt or innocence of Mrs. Duncan?

A. Yes, sir.

Q. And was that opinion which you formed one that was adverse to Elizabeth Duncan?

A. That's right.

Q. In other words, I take it then that you formed an opinion that Elizabeth Duncan was guilty of this charge; is that right?

[fol. 812] A. That's right.

Q. Did you read any other newspaper articles concerning any other charges or accusations made against Mrs. Duncan other than this one murder trial?

A. I don't recall, no, sir.

Q. You don't recall. All right. Now, this opinion that you formed with respect to the guilt of Mrs. Duncan, do you still have that opinion as you sit in the jury box this morning?

A. Well, yes, sir.

Q. And is that opinion such that it would take some evidence on the part of the defense to overcome?

A. No, sir. As has been brought out many times, she is innocent until proven guilty. Nonetheless, what I have read in the paper has all been adverse.

Q. That is right. And it was because of that fact that caused you to form the opinion——

A. That's right.

Q. That you now have?

A. Yes, sir.

Q. Do you think that the opinion which you feel, the opinion which you now have concerning her guilt, is it a pretty strong opinion?

A. That is difficult to answer.

Q. Well, all right, I won't ask you to answer it if it is hard to answer. Do you feel that it is such an opinion [fol. 813] that it would have a tendency in any way to influence your verdict in this case?

A. No, sir.

Q. Do you think that you could set that opinion completely aside and decide this case solely and exclusively from the evidence as you hear it in this courtroom?

A. That's right.

Q. You could be just as fair in it as a trial juror in this case as though you had never read anything about it or never formed any opinion with respect to Mrs. Duncan's guilt?

A. That's right, sir, to the best of my ability. I would be open-minded.

Q. You would, at least——

A. I would try.

Q. ——try hard to do it?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. And take the easy road?

A. No.

The Court: You not only would try hard to do it, but you would do it, wouldn't you?

The Prospective Juror: Yes, sir.

Mr. Sullivan:

Q. I think you said that you were secretary to the manager of the First Western Bank?

A. Yes, sir.

[fol. 814] Q. Is there more than one branch of that bank in Ventura?

A. No, sir.

Q. Do you know of any reason whatsoever why you could not be fair and impartial as a trial juror in this case?

A. No, sir, I do not.

Mr. Sullivan: No further questions.

The Court: You pass for cause?

Mr. Sullivan? Yes, your Honor.

Mr. Gustafson:

Q. Miss Hall, with respect to this burden of proof that I have, I will ask you whether you would require me

to do anything more than the law requires me; namely, to prove it beyond a reasonable doubt, but no further?

A. That's right, sir.

[fol. 815] Q. And would you have the frame of mind that would say that merely because there may be conflicts in the evidence, you would throw up your hands and say therefore there is a reasonable doubt?

A. I am sorry, sir.

Q. Well, let me put it this way. You realize that your duty as a juror and the principal duty that you are going to have, is to decide what the facts are?

A. That is right.

Q. And the reason that we need a jury and we have a lawsuit is because there is a dispute as to what the facts are, one side saying one thing and the other side saying the other?

A. Yes.

Q. But despite the fact that that is the job of the jurors to resolve those disputes and try to ascertain what the truth is, some people say the mere fact that there are two witnesses who testify opposite to each other, one testifying for the plaintiff and one for the defendant, that alone would create a reasonable doubt and therefore anyone, whoever the defendant is, is automatically not guilty. You don't have that frame of mind, do you?

A. No.

Q. In other words, you will do your best to decide what these facts are?

A. Yes.

[fol. 816] Q. Weigh the evidence according to the rules laid down by Judge Blackstock?

A. Correct.

Q. Now, would you be able to and would you actually set aside any sympathy that might be engendered for Mrs. Duncan in deciding whether she is guilty of first degree murder?

A. Yes, sir.

Q. And you would not hesitate to vote for such a verdict if you are convinced beyond a reasonable doubt that she is guilty of it, merely because of the consequences that may flow from such a verdict?

A. No.

Q. I take it that you do not have a conscientious opinion which would keep you from voting for a verdict of first degree murder that has, as one of its two alternative penalties, the death penalty?

A. No.

Q. Do you have any preconceived notions right now, Mrs. Hall, that regardless of whether a person is guilty of first degree murder and should under ordinary circumstances receive the death penalty, that you wouldn't do that if the person is a woman?

A. No.

Q. Do you have any preconceived notions with you now in the jury box that a person guilty of first degree mur-
[fol. 817] der, who otherwise would be deserving of the death penalty, should not get it because the person didn't personally do the killing but, instead, hired somebody to do it?

A. No, sir.

Q. No such notion?

A. No.

Q. You wouldn't be biased in favor of Mr. Sullivan's side of the case, would you, Miss Hall, simply because he has a live person as a client there and I represent this intangible entity called the People of the State of California?

A. No.

Q. Do you have any reason that you can think of why you would not accord to my side just as fair and impartial a trial as you would to Mr. Sullivan's side?

A. No.

Mr. Gustafson: Pass for cause.

The Court: All right, the peremptory is now with the defendant.

Mr. Sullivan: The defendant will excuse Mr. James L. York, Juror Number One.

(The prospective juror was excused.)

The Clerk: Mrs. Mildred R. Dewey—D-e-w-e-y. Mildred R. Dewey.

The Court: Mrs. Dewey, is it?

[fol. 818] The Prospective Juror: Yes.

The Court: And you have been here for several days and you know by this time what this case is all about, is that right?

The Prospective Juror: Yes.

The Court: The defendant in this case is charged with the crime of murder, and that crime may carry the death penalty. Do you have any conscientious scruples against the death penalty?

The Prospective Juror: No, I do not.

The Court: All right, you may inquire.

Mr. Sullivan:

Q. Mrs. Dewey, you live in Fillmore?

A. Yes.

Q. And may I inquire as to how long you have resided in Ventura County?

A. Thirty-four years.

Q. Have you ever had any previous experience as a trial juror in a criminal case?

A. I have not.

Q. Now may I inquire as to your business or occupation, Mrs. Dewey?

A. I'm a housewife.

Q. And is there a Mr. Dewey?

A. There is.

Q. And his occupation?

A. His business is under the name of Dewey's Feed [fol. 819] and Nursery in Fillmore.

Q. The feed and nursery business?

A. Yes, sir.

Q. For himself?

A. Yes, sir.

Q. Mrs. Dewey, you understand from what you have heard in the courtroom, that my client, Elizabeth Duncan, is charged with the murder of one Olga Duncan, do you not?

A. Yes.

Q. Is there anything about the nature of that charge that would cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. If the evidence in this case should disclose that Olga Duncan was the daughter-in-law of my client, Elizabeth Duncan, would that fact cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, it would not.

Q. Do you have any children?

A. Pardon?

Q. Do you have any children?

A. Yes, sir.

Q. If the evidence in this case should disclose that Olga Duncan at the time she came to her death was then pregnant, would that cause you to entertain any bias or preju- [fol. 820] dice against Mrs. Duncan?

A. No, sir.

Q. Have you or has any member of your family or relative or anyone near and dear to you ever been the victim of a crime of passion or assault?

A. No, sir.

Q. Or ever had occasion to be a witness against any person charged with such a crime?

A. No, sir.

Q. Have you ever been connected with any law enforcement agency?

A. No, sir.

Q. Has any relative or anyone near and dear to you ever been connected with any law enforcement agency?

A. No, sir.

Q. Are you acquainted with Mr. Gustafson, the District Attorney?

A. No, sir.

Q. Are you acquainted with any of his deputies or members of his staff?

A. Well, there is a question in my mind. Does that mean the Sheriff's Department?

Q. Well, I'm referring now only to the District Attorney's Office?

A. No, sir.

Q. I take it from what you asked me then, that you [fol. 821] are acquainted with someone connected with the Sheriff's Office of this County, is that right?

A. Yes, sir.

Q. Of Ventura County?

A. Yes, sir.

Q. Some Deputy Sheriff?

A. I do not know what his capacity is.

Q. Is this a relative or friend?

A. Well, this one person is married to my second cousin's daughter.

Q. Well, I won't even try to think out the relationship myself. Would that fact cause you, that fact alone, cause you to give any greater credence to the testimony of, let's say, a Deputy Sheriff, than you would any other witness?

A. No, sir.

Q. You feel that if any law enforcement officer is called as a witness in this case, that you would weigh and consider the testimony of such a witness by the same standard as you would that of any other witness, is that right?

A. Yes, sir.

Q. Now, it might be that Mrs. Duncan will take the witness stand and testify as a witness in her own behalf. Would you be apt to deny her the benefit of her own testimony, merely because she happens to be accused of this crime?

[fol. 822] A. Would you repeat that again?

Q. Let's assume that Mrs. Duncan during the course of this trial takes the witness stand here and testifies as a witness in her own behalf. Would you be apt to deny to her the benefit of her own testimony, merely because she happens to be accused of this offense?

A. No, sir.

Q. You feel that you could weigh and consider her testimony by the same standard as you would that of any other witness?

A. Yes, sir.

Q. You understand from what you have already heard, that as she sits in court today, the law clothes her with the presumption of innocence?

A. Yes.

Q. And that presumption goes with her throughout this trial?

A. Yes, sir.

Q. If you are accepted as a juror in this case, you feel that you could and would give her the benefit of that presumption of the law?

A. Yes, sir.

Q. Would you require the prosecution to prove to your satisfaction, to a moral certainty, beyond a reasonable doubt, the guilt of Mrs. Duncan?

A. Yes, sir.

[fol. 823] Q. Let's assume that you do act as a trial juror in this case, that you have heard all of the evidence, not only that presented by the prosecution but the evidence presented on behalf of the defendant, and you have received instructions on the law from His Honor, you have retired to the jury room, discussed this case, the evidence, fully and fairly among your fellow jurors, you have endeavored honestly and conscientiously to weigh that evidence in the light of the law that will be given to you by the Court, and you then say to yourself, "Well, I honestly and conscientiously have a reasonable doubt as to the guilt of Elizabeth Duncan." Would you under those circumstances hesitate to vote for a verdict of not guilty?

A. No, sir.

Q. Would you continue to vote for a verdict of not guilty so long as you did entertain a reasonable doubt as to her guilt?

A. I do not understand that last part.

Q. Would you continue to vote for a verdict of not guilty as long as you yourself entertained a reasonable doubt as to her guilt?

A. Yes, sir.

Q. You see, when you get into the jury room, you might discuss this and then vote a ballot and discuss it again and vote again and so forth, see, and each time you might still have a reasonable doubt as to her guilt. That [fol. 824] is what I meant to imply by my question. I maybe didn't make it clear. Do you think that you would be able to do that, irrespective of how your fellow jurors felt about this matter?

A. Yes.

Q. Now, do you subscribe to any of the local papers?

A. I do.

Q. And you have been a subscriber for some time past?

A. Many years.

Q. Many years.

A. (The prospective juror nodded affirmatively.)

Q. Do you sometimes listen to newscasts on the radio?

A. No, sir.

Q. Do you ever listen to the news broadcasts on television?

A. Occasionally.

Q. Do you recall whether or not you ever read anything concerning this case?

A. Yes, sir.

Q. Did you read any article in any newspaper which purported to report the testimony taken before the grand jury?

A. I do not recall reading that article.

[fol. 825] Q. Do you know whether or not you read any article in any newspaper which purported to report a confession of one Augustine Baldonado?

A. I do not remember what name it was.

Q. Do you recall having read an article which purported to report a confession of one Luis Moya?

A. I do not remember.

Q. Do you remember some article in which somebody made a confession?

A. Yes, sir.

Q. But you don't remember what the name of the person was?

A. No, sir.

Q. All right. Well, in any event, the article which you read concerning a confession by some person, was there anything in that article wherein, in this confession, that person accused Mrs. Duncan of participation in this event, that you read?

A. Would you say that again?

Q. You did read some kind of an article which purported to report a confession of some person?

A. Yes.

Q. Did that article, which contained that alleged confession, was there anything in that confession which you read, which accused Mrs. Duncan of participation in this offense?

[fol. 826] A. I can't truthfully say that I did.

Q. You can't recall?

A. No, sir.

Q. All right. In addition to—withdraw that for a moment. Did you read any article in any newspaper which purported to report a statement or statements concerning this case that were released by Mr. Roy Gustafson, the District Attorney in this County?

A. No.

Q. In addition to what you did read concerning this case, did you discuss it with anyone?

A. My husband and, I would say, two or three people.

Q. All right. These two or three people are friends of yours?

A. Yes, sir.

Q. Acquaintances, is that right?

A. Yes.

Q. And did they make some statement concerning the case, the people that you discussed it with?

A. Yes, sir.

Q. And did you believe the truth of what they said concerning this case?

A. I just took it for granted it was what they read in the newspaper.

Q. I mean did you believe it was true?

[fol. 827] A. I had no reason to disbelieve it.

Q. You had no reason to disbelieve it. Do you know whether or not any of these people, outside of your husband, let's say, that you discussed this case with, had any personal knowledge of the things that you heard them say?

A. No, sir.

Q. Do you know whether any one or more of those persons might become witnesses in this case?

A. Not to my knowledge.

Q. Well, from what you did read and from what you discussed or heard discussed concerning this case, did you yourself form any opinion with respect to the guilt or innocence of Mrs. Duncan?

A. No, sir.

Q. Never at any time did you form any opinion?

A. No, sir.

Q. Have you heard any other persons express any opinion concerning her guilt?

A. No, sir.

Q. And as you sit in the jury box here today, do you have any opinion concerning either the guilt or innocence of Mrs. Duncan?

A. No, sir.

Q. You feel that if you are accepted as a juror in this case, that you could decide her guilt or innocence solely [fol. 828] from the evidence as you hear it from the witness stand in this courtroom, is that right?

A. Yes, sir.

Q. You wouldn't allow anything that you read or heard outside of court here, not under oath, influence your verdict one way or the other, is that correct?

A. That is right.

Q. Do you know of any reason why you could not give to Mrs. Duncan a fair and impartial trial?

A. No, sir.

Mr. Sullivan: Thank you. No further questions.

Mr. Gustafson: Shall I continue, Your Honor?

The Court: Go ahead.

Mr. Gustafson:

Q. Mrs. Dewey, you don't know Mr. Sullivan or Mr. Frank Duncan or Mrs. Elizabeth Duncan, do you?

A. No, sir.

Q. Now, in deciding this case, you will be governed solely by the evidence that you hear presented in the courtroom, will you not?

A. Yes.

Q. And in that respect you won't let any emotions such as sympathy for Mrs. Duncan, to i[illegible]ence your verdict, will you?

A. No, sir.

Q. I think you probably have gathered from some of [fol. 829] the questions that have gone before, that we would hardly be here, trying a lawsuit, if everybody agreed on what the facts were, that there will be some differences in the evidence?

A. Yes, sir.

Q. A difference between what I present as evidence and what Mr. Sullivan presents as evidence.

A. Yes.

Q. And it will be your job to try to present what the facts are, on the basis of the evidence presented to you?

A. Yes.

Q. And that means that sometimes you will have to accept someone's testimony.

A. Yes.

Q. Are you capable of doing that?

A. Yes, sir.

Q. And the mere fact that there would be differences in testimony, with one person saying one thing and the other side saying another thing, wouldn't cause you, would it, to throw up your hands and say, "Well, that automatically creates a reasonable doubt because there are two different stories"?

A. No.

Q. You would do your best to weigh the evidence, to decide what the truth is, and to come to a conclusion? [fol. 830] A. Yes, sir.

Q. And if that conclusion was that you were convinced beyond a reasonable doubt that Mrs. Elizabeth Duncan was guilty of murder in the first degree, you wouldn't hesitate to vote for that verdict, would you?

A. No, sir.

Q. Regardless of the consequences that might flow from such a verdict?

A. That is right.

Q. Do you have any opinion respecting the death penalty which would keep you from voting for a verdict of murder in the first degree, when one of the two possible penalties could be invoked on somebody guilty of murder in the first degree, is the death penalty?

A. No, sir.

Q. Now, suppose you have a case where a person has been found guilty by you and by your fellow jurors of murder in the first degree and it is the type of case, based on the evidence that you heard, both the evidence of the crime and the issue of penalty, that it is the type of a case where it is your conclusion that the appropriate penalty is the death penalty. Would you refuse to impose the death penalty on that person simply because the person happened to be a woman rather than a man?

A. No, sir.

Q. Now, similarly with respect to a person found guilty [fol. 831] of first degree murder under the law and under the evidence, one where you think the death penalty otherwise would be the proper penalty *otherwise would be the proper penalty*, but under the evidence in that case that particular person didn't personally do the killing but hired somebody else to do the killing, do you feel that under those circumstances the death penalty ought never to be applied to anybody who didn't personally kill?

A. That I don't understand.

Q. In other words, do you have a feeling that you would never under any circumstances give the death penalty to a first degree murderer, if that first degree murderer didn't personally do the killing? You see—let me explain it this way, Mrs. Dewey—a person can be guilty of first degree murder if he personally killed somebody with his own hands or weapon or something, and he can be equally guilty of first degree murder if he encourages or advises another person to do the killing. Then, you see, he wouldn't be personally doing the killing but he would be doing it to another person. Now, in either instance the person could be guilty of first degree murder. He would be. And that causes some people to say, "Well, I don't have any objection against the death penalty for a person who personally did it, but I don't think that it should be applied to some-[fol. 832] one who hired someone else to do it." Do you have that frame of mind, that you would not apply the death penalty to someone who hired somebody to kill?

A. No.

Q. In other words, if the person were guilty of first degree murder by reason of having hired someone to kill and you thought that the death penalty was the appropriate penalty to impose, you wouldn't fail to impose it just—the person didn't personally do the killing, would you?

A. No.

Q. All right. There is no question in your mind about that?

A. No.

Q. Can you think of any reason, Mrs. Dewey, why you couldn't give my side of the case, the People of the State of California, a fair and impartial trial?

A. No, sir.

Mr. Gustafson: Pass for cause.

The Court: All right. The peremptory is with the People.

Mr. Gustafson: I will excuse Mr. Dye.

(The prospective juror was excused.)

The Court: Call another name.

The Clerk: William—initial "J"—Stocker—S-t-o-c-k-e-r. William J. Stocker.

[fol. 833] The Court: Well, the court will take a brief recess.

(Recess.)

[fol. 834] The Court: Mr. Stocker, is it?

The Prospective Juror: Yes, sir.

The Court: Where do you live?

The Prospective Juror: Fillmore.

The Court: Have you ever served on a jury in a criminal case?

The Prospective Juror: No, sir.

The Court: Well, you know what this case is all about by this time. The defendant is accused of murder, and that crime could carry with it the death penalty. Do you have any conscientious scruples against the death penalty?

The Prospective Juror: Yes, sir, I do.

The Court: You do.

Mr. Gustafson: Challenge for cause.

The Court: All right, you are excused.

The Clerk: Dorothy P. Durr, D-u-r-r.

The Court: Mrs. Durr, you live in Oxnard, do you not?

The Prospective Juror: Yes, sir.

The Court: You know what this case is all about by this time. The defendant is charged with the crime, a crime that if she should be convicted of, could carry the death penalty. Do you have any conscientious scruples against the death penalty?

The Prospective Juror: Yes, I have.

The Court: What?

The Prospective Juror: Yes, sir.

[fol. 835] Mr. Gustafson: Challenge for cause.

The Court: All right, you are excused. Call another name.

The Clerk: George W. Wooff, W-o-o-f-f.

The Court: Where do you live, Mr. Wooff?
The Prospective Juror: Pardon?
The Court: Where do you live?
The Prospective Juror: Ojai.
The Court: How long have you lived in this County?
The Prospective Juror: Thirty-six years.
The Court: Well, you know what this case is all about by this time. This defendant is charged with the crime of murder. A conviction of that crime could carry with it the death penalty. Do you have any conscientious scruples against the death penalty?
The Prospective Juror: I do, sir.
Mr. Gustafson: Challenge for cause.
The Court: All right, you are excused. Call another name.
The Clerk: Earl S. C-a-s-t-e-e-l. Casteel.
The Court: Mr. Casteel, where do you live?
The Prospective Juror: Fillmore.
The Court: How long have you lived in this County?
The Prospective Juror: About 13 years.
The Court: In this case the defendant, Elizabeth Duncan, is charged with the crime of murder. That crime, if there [fol. 836] is a conviction, could carry with it the death penalty. Do you have any conscientious scruples against the death penalty?
The Prospective Juror: I do.
The Court: You have?
The Prospective Juror: Yes.
Mr. Gustafson: Challenge for cause.
The Court: All right, you are excused.
The Clerk: Robert W. Young, Y o u n g.
The Court: Where do you live, Mr. Young?
The Prospective Juror: Ojai.
The Court: How long have you lived in Ventura County?
The Prospective Juror: Two years.
The Court: Do you have any conscientious scruples against the death penalty?
The Prospective Juror: Where the defendant—is that the one who committed the crime?
The Court: What?
The Prospective Juror: Where the defendant—is that the accused of crime, but did not actually do it?
The Court: Well, you may inquire.

Mr. Sullivan:

Q. Mr. Young, ma' I inquire as to your business or occupation, please?

A. Hotel.

Q. Are you married, Mr. Young?

A. No, sir.

Q. You understand from what you have already heard [fol. 837] during the past week in this courtroom that my client, Elizabeth Duncan, is charged with the murder of Olga Duncan?

A. Yes.

Q. Is there anything about the nature of that charge that would cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. If the evidence in this case should disclose that Olga Duncan was the daughter-in-law of Elizabeth Duncan, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. If the evidence in this case should disclose that Olga Duncan at the time she came to her death was then pregnant, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. Have you or has any relative of yours or anyone near and dear to you ever been the victim of a crime of assault or passion?

A. No.

Q. Or ever had occasion to be a witness against any person charged with a similar offense?

A. No.

Q. Have you ever been connected with any law enforcement agency?

[fol. 838] No, sir.

Q. Or any relative of yours or anyone near and dear to you ever been connected with any law enforcement agency?

A. No.

Q. Are you acquainted with Mr. Gustafson, the District Attorney of this County?

A. No.

Q. Are you acquainted with any of the deputies in his office or members of his staff?

A. No.

Q. Well, assuming that a law enforcement officer would be called as a witness in this case, would you be apt to give any greater credence to the testimony of such a witness than you would that of any other witness merely because he happens to be a law enforcement officer?

A. No.

Q. Do you feel that you could weigh and consider the testimony of such a witness by the same standards as you would that of any other witness?

A. Yes.

Q. Assuming that Mrs. Duncan takes the witness stand and testifies as a witness in her own behalf, would you be apt to deny to her the benefit of her own testimony merely because she happens to be accused of this offense?

A. No.

Q. You think you could also weigh and consider her [fol. 839] testimony by the same standards as you would that of any other witness; is that right?

A. Yes.

Q. You understand that as she sits in court today the law clothes her with the presumption of innocence, do you not?

A. Yes.

Q. And you understand further from what you have heard that that presumption goes with her throughout this trial; is that right?

A. Yes.

Q. If you are accepted as a juror in this case, do you feel that you could accord to her the benefit of that presumption of the law?

A. No.

Q. You couldn't give her the benefit of that presumption; is that right?

(Prospective juror shakes head negatively.)

The Court: Is that right? Answer up.

The Prospective Juror: Yes. The answer was "No".

Mr. Sullivan:

Q. Is that because of the fact that you, yourself, have formed some opinion concerning her guilt or innocence?

A. That is true.

Q. Have you in the past read something in the papers concerning this case?

[fol. 840] A. Yes, I have.

Q. Did you read any article in any newspaper which purported to report the testimony that was given before the Grand Jury in this matter?

A. Yes, I did.

Q. And did you read any article in any newspaper which purported to report a confession by one Augustine Baldonado?

A. Yes.

Q. Did you read any article in any newspaper which purported to report a confession by one Luis Moya?

A. Yes, I did.

Q. Did you hear any radio broadcast which purported to report a confession by one Luis Moya?

A. Yes.

Q. Did you read any newspaper articles which purported to report statements concerning this case that were made by Mr. Roy Gustafson, the District Attorney of this County?

A. Yes, I have.

Q. In addition to what you read, have you discussed this case with other persons?

A. Very little.

Q. There has been some discussion?

A. Just slightly.

Q. Just slightly; is that right?

[fol. 841] (Prospective juror nods head affirmatively.)

Q. In any event, from what you read, you yourself, have formed an opinion adverse to Mrs. Duncan; is that right?

A. I definitely have.

Q. That opinion is that Mrs. Duncan is guilty of this offense?

A. That is true.

Q. Is that a pretty strong opinion that you hold?

A. Very.

Q. And you are of that opinion as you sit in the jury box here today; is that correct?

A. Yes, I am.

Q. Is that opinion such that it would require some evidence on the part of we of the defense to overcome?

A. I believe it would take a great deal.

Q. A great deal. Do you feel that that opinion is such that it would prevent you from acting fairly and impartially; is that right?

A. I certainly do.

Q. Irrespective of what the law might be, do you feel that you are biased and prejudiced against Mrs. Duncan; is that right?

A. In a manner of speaking, yes.

Q. If you, yourself, were on trial here today for this identical offense, you wouldn't want to be tried before a jury composed of men and women of your present [fol. 842] frame of mind; would you?

A. Not if they believed as I do.

Q. You don't feel that you could get a fair and impartial trial at the hands of such a jury; is that right?

A. That is true.

Mr. Sullivan: We are going to challenge this juror for cause.

Mr. Gustafson: I don't care to examine, your Honor.

The Court: All right, you are excused. Call another ame.

The Clerk: Archie L. Horrell, H-o-r-r-e-l-l, Archie L. Horrell.

The Court: Where do you live?

The Prospective Juror: Meiners Oaks.

The Court: How long have you lived in this County?

The Prospective Juror: About 50 years.

The Court: Have you ever served on a jury in a criminal case?

The Prospective Juror: No, sir.

The Court: You have been here in attendance in court for several days and you know what this case is all about?

The Prospective Juror: I do.

The Court: You know that this defendant is charged with the crime of murder and that crime, if a conviction should

follow, could carry with it the death penalty. Do you have any conscientious scruples against the death penalty? [fol. 843] The Prospective Juror: No, sir.

The Court: All right, you may inquire.

Mr. Sullivan:

Q. Mr. Horrell, may I inquire as to your business or occupation, please?

A. Farmer.

Q. Are you married?

A. Yes, sir.

Q. Do you have children?

A. No, sir.

Q. You understand from what you have heard in the courtroom here what my client, Elizabeth Duncan is charged with, don't you?

A. Yes.

Q. If the evidence in this case should disclose that Olga Duncan, the alleged victim, was the daughter-in-law of Elizabeth Duncan, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

[fol. 844] Q. If the evidence should disclose that at the time Olga Duncan came to her death, she was then pregnant, would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No, sir.

Q. Is there anything about the nature of the charge itself that would cause you to entertain any bias or prejudice against her?

A. No, sir.

Q. Have you or has any member of your family or anyone near and dear to you ever been the victim of a crime of assault or passion?

A. No, sir.

Q. Or ever had occasion to be a witness against any person charged with such a crime?

A. No, sir.

Q. Have you ever been connected in any manner with any law enforcement agency?

A. No, sir.

Q. Has any relative or any person near and dear to you ever been connected with any law enforcement agency?

A. My father was a Deputy Sheriff of Ventura County many years ago.

Q. I see. Well, if a Deputy Sheriff should be called as a witness in this case, would the fact that your father years ago had been a Deputy Sheriff of this County, cause [fol. 845] you to give any greater credence to the testimony of such a witness than you would to any other witness?

A. No, sir.

Q. In other words, that wouldn't influence you one way or the other in judging the credibility of an officer who might testify as a witness in this case, is that it?

A. Not in the least.

Q. And you feel that you could decide and weigh the credibility of such a witness by the same standards as you would that of any other witness, is that correct?

A. Yes, sir.

Q. Well, if Mrs. Duncan should see fit to take the witness stand and testify, would you be apt to deny her the benefit of her own testimony merely because she happens to be charged with this offense?

A. No, sir.

Q. You understand from what you have heard in the courtroom, that as she sits here today, the law clothes her with the presumption of innocence?

A. Yes.

Q. Do you think that you could accord to her the benefit of that presumption of the law?

A. Yes, sir.

Q. And if you are called upon to act as a trial juror in this case, are you going to require the prosecution to prove to your satisfaction, to a moral certainty and beyond [fol. 846] a reasonable doubt, the guilt of Elizabeth Duncan?

A. Yes, sir.

Q. And if, after a full and fair consideration of all of the evidence, you, yourself, entertain a reasonable doubt as to her guilt, are you going to have any hesitancy in resolving that doubt in her favor and returning a verdict of not guilty?

A. Would you rephrase that question?

Q. If, after a full and fair consideration of all of the evidence in this case, you have weighed it in the light of the law as given to you by the Court, you yourself say that you have an honest and conscientious—you honestly and conscientiously have a reasonable doubt as to her guilt, under those circumstances would you have any hesitancy in resolving that doubt in her favor and voting for a verdict of not guilty?

A. No, sir.

Q Would you continue to do that as long as you did entertain that reasonable doubt?

A. Yes, sir.

Q. And you feel that you could do that, irrespective of how your fellow jurors might feel about the matter, is that right?

A. Yes, sir.

Q. Now, do you subscribe to any of the local papers?

A. Yes, I do.

Q. And have you been a subscriber for some time?

A. A good many years.

[fol. 847] Q. A good many years. Do you sometimes listen to news events that are broadcast on the radio?

A. Yes, sir.

Q. And you listen to television broadcasts of the news?

A. Yes, sir.

Q. Commentators and so forth?

A. Yes, sir.

Q. Have you read anything concerning this case?

A. I have.

Q. Did you read any articles concerning this case which purported to relate the testimony of the witnesses who appeared before the grand jury?

A. I believe I did, yes.

Q. And did you read any articles concerning this case which purported to relate a confession of one Augustine Baldonado?

A. Yes, sir.

Q. Did you read any articles concerning this case which purported to relate a confession of one Luis Moya?

A. Yes, sir.

Q. Did you read any articles concerning this case which

purported to release statements concerning this case that were given by Mr. Roy Gustafson, the District Attorney?

A. I don't recall any particular statement, no.

Q. In any of these articles, particularly referring to the [fol. 848] articles which purportedly related the confessions of Baldonado and Moya, did you read anything in those confessions wherein either one of those men accused Mrs. Duncan of participation in this offense?

A. I did.

Q. In addition to what you read concerning this case, did you discuss it with anyone?

A. I have.

Q. Could you tell me about how many people, just approximately?

A. Well, I imagine 8 or 10.

Q. These were people who were acquaintances or friends, is that right?

A. Yes.

Q. And you heard them make some statements concerning the case?

A. Yes.

Q. Did you believe that what they said concerning it was true?

A. Well, I had no reason to doubt their word.

Q. You had no reason to disbelieve what they said?

A. No.

Q. And do you know whether the things that those persons said to you concerning this case were matters that they knew of their own personal knowledge?

A. I don't think so. It was just what they read in the [fol. 849] paper.

Q. Do you know that is where they got it?

A. No.

Q. So you couldn't swear that that wasn't something that they knew of their own personal knowledge?

A. No.

Q. Do you know whether or not any of those persons whom you heard discuss this case or with whom you discussed it, might possibly become witnesses in this case?

A. I hardly think so.

Q. Do you know?

A. I do not.

Q. Well, as a result of what you heard concerning this case and which you discussed or heard discussed concerning it, or of any broadcast you heard over the radio, did you yourself form any opinion concerning the guilt or innocence of Mrs. Duncan?

A. I did, to the extent——

Q. And was that opinion which you formed one that was adverse to Mrs. Duncan?

A. Yes, to the extent of any opinion that a person may entertain from the evidence or articles that they might read in the paper, at the present time.

Q. That is the source of the information that caused you to form that opinion, isn't that right?

A. That is right.

[fol. 849a] Q. And what you read in the paper you believe to be true?

A. Yes.

Q. And the opinion which you formed was that Mrs. Duncan was guilty?

A. Yes.

Q. Did you read any article in any newspaper concerning any other charges that have been made against Mrs. Elizabeth Duncan?

A. No, sir.

Q. Only this alleged murder charge, is that it?

A. Right.

Q. Well, now, this opinion which you formed, from what you read in the newspaper, do you still entertain that opinion as you sit in the jury box?

A. I do.

Q. And is that a pretty strong opinion which you have?

A. No. My opinion is not positive and would not be until I had heard and weighed all the evidence produced by both sides of the case.

Q. Well, is the opinion such that it might require some evidence on the part of the defense to overcome?

A. Well, it would require it on both sides.

Q. Well, how about the defense? Suppose we didn't pre[illegible] any?

[fol. 850] A. Well, I would have to weigh the evidence produced in court.

Q. Is your verdict likely to be influenced to any extent by this opinion which you formed?

A. Absolutely not.

Q. You think you can set it completely aside and decide this case solely and exclusively from the evidence as you hear it in this courtroom?

A. Yes, sir.

Q. You don't think that it would influence your verdict one way or the other?

A. I do not.

Q. Do you think you could be just as fair as if you had never read anything about this case or never heard anything about it? Is that it?

A. Yes, sir.

Q. Well, let's assume that your wife was the person on trial here today and instead of Elizabeth Duncan seated in this chair at the counsel table, it was Mrs. Horrell who was here on trial, charged with this identical offense, and you wanted your wife to be tried before 12 people who were absolutely fair and impartial, unbiased and unprejudiced in any manner whatsoever, and all you wanted her to receive at the hands of such jury was a fair and impartial verdict. Would you be willing to trust the fate of Mrs. Horrell to 12 people of your present frame of mind?

[fol. 851] A. I would.

Q. You feel that if you did do that, that you could be satisfied with whatever verdict might be returned?

A. Yes, sir.

Q. Do you know of any reason whatsoever you cannot render to Mrs. Duncan a fair and impartial trial?

A. I do not.

Mr. Sullivan: I have no further questions.

Mr. Gustafson: Pass for cause?

Mr. Sullivan: No further questions.

The Court: You pass for cause?

Mr. Sullivan: Yes, your Honor.

Mr. Gustafson:

Q. Mr. Horrell, with respect to the death penalty, do you entertain any conscientious opinion which would preclude you from voting for a verdict of murder in the first degree, knowing that one of the two possible penalties for murder in the first degree is the death penalty?

A. No.

Q. And do you have any mental reservations that while the death penalty is not objectionable in general, you would never apply it to a woman?

A. No.

Q. Do you have any mental reservation that while the death penalty in general may not be objectionable, you wouldn't ever apply it to a first degree murderer who did not personally do the killing but who hired someone else [fol. 852] to do the killing?

A. No.

Q. Would you be fair to my side of the case as well as to Mr. Sullivan's side?

A. Yes, sir.

Q. And you would not be influenced in your verdict of the guilt or innocence of Mrs. Duncan by any passions or prejudices or sympathies or anything of that nature, would you?

A. No, sir.

Q. You will decide it wholly on the basis of the evidence presented in court and by the instructions given to you by Judge Blackstock?

A. Yes, sir.

Q. And you will apply those instructions of law whether you think they are wise or unwise?

A. That is right?

Q. Good or bad? Right?

A. Yes, sir.

Mr. Gustafson: Pass for cause.

The Court: All right, the peremptory is with the People.

Mr. Gustafson: I accept the jury, your Honor.

Mr. Sullivan: Your Honor, before the jury are sworn, may counsel approach the bench?

The Court: Yes.

(The following proceedings were had at the Judge's bench, outside the hearing of the prospective jurors:)

[fol. 853] RENEWAL OF MOTION FOR REMOVAL AND CHANGE OF VENUE AND DENIAL THEREOF

Mr. Sullivan: At this time, your Honor, I want to renew my motion for removal, change of venue, to another county, upon the grounds that it is apparent from the voir dire

examination of the jurors who have been examined, the prospective jurors who have been examined the last four and a half days, that my client cannot receive a fair and impartial trial in this County.

I think it is apparent from the voir dire examination that the vast majority of the prospective jurors who have been called into this jury box and been examined on voir dire examination, have formed an opinion adverse to Elizabeth Duncan. The Court has so far, according to my records, excused 17 jurors for cause by reason of the fact that they were biased, having previously formed an opinion with respect to the guilt of Mrs. Duncan. Additionally, we have had to exercise some 12 or 14—I am not sure of the exact number—but some 12 or 14 of our peremptory challenges in order to excuse other jurors who have formed opinions or stated they have formed opinions that Mrs. Duncan was guilty, and as to which challenges for cause were disallowed by the Court.

[fol. 854] It therefore left us with some six or—peremptory challenges instead of the usual 20, because, in effect, we had to use our peremptories on jurors whom we felt, and I believe that the voir dire examination discloses, were biased and prejudiced against Mrs. Duncan.

Now, there are other matters that have been previously argued to the Court concerning this motion for removal or change of venue in relation to the vast amount of newspaper publicity published concerning this case, particularly in reference to statements that were released to the press by the District Attorney's Office concerning this case, which were calculated to appeal to the bias and prejudice of the public at large. I do not wish to argue that matter further. It has been argued heretofore extensively before, Your Honor, and I'm willing to submit the matter, but I did want to call these additional matters to the Court's attention which occurred during the voir dire examination.

The Court: Do you want to argue the motion for a change of venue?

Mr. Sullivan: I am just arguing it here now.

The Court: Do you want to argue it further in the absence of the jury?

Mr. Sullivan: No. I'm going to submit it to Your Honor. I don't want to go into an extensive argument.

You have heard the voir dire examination of all of these [fol. 855] jurors. The only other thing I could say, Your Honor, is that I haven't read yesterday's transcript of the voir dire examination. Perhaps if I had some time to go through it, I might pick out some additional things, but I think that perhaps Your Honor recalls the tenor of the answers which we received in our voir dire examination.

Mr. Gustafson: Well, if the matter is being submitted by Mr. Sullivan now, I would like to respond to that.

The Court: You would like what?

Mr. Gustafson: I would like to answer the argument, if it is being made now.

The Court: Go ahead and answer it.

Mr. Gustafson: According to my records, in the first place, more jurors were excused for cause by me than were excused for cause by Mr. Sullivan, and I think Mr. Sullivan's records will probably bear that out.

Secondly, I dispute the fact that there is or has been any juror passed for cause who was biased or prejudiced within the meaning of the law. It is true that there were several jurors who stated that they had an opinion formed as to the guilt of Mrs. Duncan, but no one was allowed to remain on that jury panel by Your Honor who did not say that he would not set aside that opinion and decide the case wholly and solely on the basis of the evidence. Each and every one of the jurors who were not excused for cause, stated that the case would be decided solely on the basis [fol. 856] of the evidence, that Mrs. Duncan would have the presumption of innocence, that they would vote for a verdict of not guilty unless they were persuaded by the evidence here in court that Mrs. Duncan was guilty beyond any reasonable doubt.

This is all that the law requires for a juror to be fair and impartial. It is not proper to equate an opinion gained from newspapers with bias and prejudice. Those two things aren't the same, and the law expressly recognizes that a juror can be unbiased and unprejudiced, despite any opinion, if, in fact, he will decide the case on the evidence and not be governed by anything that he has learned outside of court and if, in fact, he will not permit the opinion to influence his verdict.

The Penal Code, relating to removal of actions, I don't have before me right now——

Mr. Sullivan: It is 1033, isn't it?

The Court: The Penal Code?

Mr. Gustafson: Yes.

The Court: Here it is (indicating).

Mr. Sullivan: 1033—1034.

Mr. Gustafson: Section 1033.5 provides that "the Court may of its own motion, or on petition of any of the parties to the proceeding, order a change of venue to an adjoining County, whenever it appears as a result of the exhaustion of all the jury panels called that it will be impossible to [fol. 857] secure a jury to try the cause in the original County." Now, that section obviously cannot be the applicable one here, because we haven't exhausted even the first jury panel called. We have still, Mr. Clerk, 50 jurors?

The Clerk: Fifty jurors left.

Mr. Gustafson: Fifty jurors left in the panel. So that section is not applicable.

The only section then applicable could be Section 1034 of the Penal Code, wherein the grounds for removal must be shown by affidavit. Now, the only affidavits referred to in Mr. Sullivan's application were those which were heretofore filed with Mr. Moya's motion and with Mr. Baldonado's motion, and I have heretofore filed counter affidavits in those matters, and I have also pointed out that there was not one single statement in any of those affidavits indicating that any particular person could not give any of the three defendants a fair and impartial trial, and Your Honor has acted on the application of Mr. Moya and the application of Mr. Baldonado and denied them.

Nothing new is presented by Mr. Sullivan's written application, which the Court must now be acting upon, except a couple of further newspaper items that told about the Court's denial of those prior motions.

So I submit that there is nothing in the record and there is nothing that has transpired here in any voir dire ex- [fol. 858] amination of the jurors to constitute grounds for granting Mr. Sullivan's application on behalf of Mrs. Duncan.

Mr. Sullivan: You have heard the statement under oath of many of these people who were excused for cause, that they couldn't give her a fair and impartial trial. That is a statement under oath.

On this question of the District Attorney having exercised more challenges than we did, true, my notes show that he exercised 22, but most of those people weren't examined for cause. I mean they weren't even examined on voir dire examination, other than to state they were opposed to the death penalty. There was no opportunity for us to examine those people and to determine whether or not, if they were called upon to serve as jurors, whether they had formed or expressed any opinion concerning the defendant's guilt. It was never inquired into. We didn't have an opportunity to try to inquire into it, because they were excused immediately when they said they were opposed to the death penalty, and that doesn't establish that they had not formed or expressed an opinion, nor that they were not biased or prejudiced against my client.

Mr. Gustafson: The important point, however, is that all of the persons who expressed such statements as would cause the Court to conclude that those persons were, in fact, biased and prejudiced, were challenged for cause and [fol. 859] excused. They are not any longer here. But it wasn't eventually stipulated to by the District Attorney that it could be allowed.

Mr. Gustafson: I may say this, Your Honor. Yesterday I was served with a copy of an application from Mr. A. L. Wirrin to appear as amicus curiæ to argue Mr. Sullivan's motion for change of venue.

Mr. Sullivan: He wasn't going to argue our motion. He was going to argue as a friend of the Court.

The Court: Mr. Wirrin told me that he wasn't interested in Mr. Sullivan's motion. Well, Mr. Wirrin isn't here today, and I have a wire from him that says he can't be here until Tuesday, but I'm not going to wait. There is nothing to that.

I am thoroughly convinced that this jury, as constituted at the present time, will give to this defendant an absolutely fair and impartial trial and therefore the motion for change of venue is denied.

Mr. Gustafson: Now I would like to ask the Court if the Court will make a finding that this is likely to be a protracted trial.

The Court: Yes. I'm already prepared to make that finding. The Court will have the Clerk—the Clerk will

enter into the minutes of the court the fact that this court is of the opinion that this is likely to be a protracted trial and therefore, after the jury have been empanelled and [fol. 860] sworn, you will draw two extra jurors as alternates. Is that enough?

Mr. Gustafson: I have personally thought of three.

Mr. Sullivan: I think we can get along with two others, don't you?

Mr. Gustafson: All right.

The Court: I think two is enough.

Mr. Sullivan: How about challenges for the alternates?

Mr. Gustafson: Mr. Sullivan said how about challenges to the alternates.

The Court: Challenges for the alternates, you have as many challenges as there are alternates. That is what the Code says in plain English. In other words, you would have two challenges. You would each have two challenges. If we had three, you would have three challenges.

[fol. 861] (The following proceedings were had in open court:)

The Court: Shall we swear this jury or wait until after noon?

Mr. Sullivan: Whatever your Honor feels about the matter.

Mr. Gustafson: I suggest that the jury be sworn and admonished, your Honor.

The Court: All right, swear the jury.

(Jury sworn.)

The Clerk: You may be seated, please.

The Court: Now, all the rest of this jury panel will return here at 1:45. We aren't through with you yet. We have to have you all here at 1:45.

Ladies and gentlemen of the jury, remember you must not discuss this case among yourselves or with anyone else, and you must not form or express any opinion about anything connected with this trial until the case has been finally submitted to you. And it is not finally submitted to you until all of the evidence has been adduced, the attorneys have argued the case, if they desire to do so, the Court has instructed the jury relative to the law of the case and sends you out to deliberate. That is when it is finally sub-

mitted to you. Up until that time you must not discuss it, remember, even among yourselves.

Sometimes I have noticed jurors talking about the case right in the jury box. That is not proper. That is illegal. [fol. 862] You mustn't do that. You mustn't form or express any opinion until the case has been finally submitted to you and you are out in the jury room.

If anyone should attempt to discuss this case with you at any time or any place, it is your duty as a juror to immediately at the earliest opportunity notify the Court about that incident.

So you are now excused until 2:45—I mean 1:45. 1:45.

(Whereupon the Court adjourned proceedings until 1:45 P.M. o'clock, at 12:02 o'clock P.M.)

[fol. 863] Ventura, California, February 20, 1959; 1:45 o'clock P.M.

The Court: All right, the jury are all present and in their proper places. Draw out a name, another name for the alternate.

The Clerk: Richard; initial "B" Elkins, E-l-k-i-n-s, Richard B. Elkins.

Just take the upper. Draw another one also?

The Court: What?

Mr. Gustafson: We should draw two names, I believe, your Honor.

The Court: Draw them both at once?

Mr. Gustafson: Yes, your Honor.

The Court: All right, draw the other name.

The Clerk: The first name is Jan, J-a-n. The last name is Fosselius, F-o-s-s-e-l-i-u-s. How do you pronounce that?

The Prospective Juror: Fosselius.

The Clerk: Fosselius.

The Court: Well, Mr. Richard Elkins, you live in Fillmore?

The Prospective Juror: Yes, sir.

The Court: How long have you lived in Ventura County?

The Prospective Juror: Forty-six years.

The Court: That means you have lived here all of your [fol. 864] life?

The Prospective Juror: Yes, sir.

The Court: Is that right?

The Prospective Juror: Yes, sir.

The Court: You have been in the courtroom here for several days so you know what the case is all about?

The Prospective Juror: Yes, sir.

The Court: You know that the defendant is charged with murder?

The Prospective Juror: Yes, sir.

The Court: And in a case such as this where the defendant is charged with murder, if she should be convicted, the conviction could carry the death penalty. Do you have any conscientious scruples against the death penalty?

The Prospective Juror: No, sir.

The Court: All right, you may inquire.

Mr. Sullivan:

Q. Mr. Elkins, may I inquire as to your business or occupation, please?

A. Trucking.

Q. Trucking business?

A. Yes.

Q. Are you married, Mr. Elkins?

A. Yes, sir.

Q. Do you have a family, children?

A. Yes.

Q. You understand from what you have already heard [fol. 865] what Mrs. Duncan is charged with, do you not?

A. Yes.

Q. Is there anything about the nature of those charges that would cause you to entertain any bias or prejudice against her?

A. No.

Q. Assuming that the evidence in this case should disclose that Olga Duncan, the alleged victim, was her daughter-in-law. Would that cause you to entertain any bias or prejudice against her?

A. No.

Q. Assuming the evidence shows that Olga Duncan at the time she came to her death was then pregnant. Would that cause you to entertain any bias or prejudice against Mrs. Duncan?

A. No.

Q. Have you or has any member of your family or anyone near and dear to you ever been the victim of a crime of assault or passion?

A. Yes.

Q. Was that you, yourself, or some relative?

A. My brother.

Q. Your brother. And was that a crime of passion or something?

A. No, sir, assault.

Q. Assault. Was that in recent years?

[fol. 866] A. Three years ago.

Q. Three years ago. Was that in Ventura County?

A. Yes.

Q. Were you required or called upon to testify as a witness in any——

A. No.

Q. —matter arising out of that assault?

A. No.

Q. Well, the fact that your brother some three years ago was the victim of some kind of an assault, would that have any tendency to bias and prejudice you as a juror in this particular case?

A. No.

Q. You feel that you could decide this case just as fairly as if your own brother had never gone through that unfortunate experience; is that correct?

A. Yes, sir.

Q. Have you ever been connected with any law enforcement agency?

A. I am at present, sir.

Q. At the present time?

A. Yes, sir.

Q. In what capacity?

A. I am an auxiliary policeman in Fillmore.

Q. An auxiliary policeman in Fillmore. And do you take an active part in that work?

[fol. 867] A. Well, it is just being formed.

Q. Just being formed?

A. Yes.

Q. I see. You are going to be or are a member of the auxiliary force?

A. Yes, sir.

Q. Well, it might be that certain law enforcement officers may testify in this case. Would the fact that you are now or expect to be a member of the auxiliary police force in your home town, would that fact cause you to give any greater credence to the testimony of a law enforcement officer than you would any other witness?

A. No.

Q. You don't think it would have any tendency one way or the other to influence your verdict in this matter?

A. No.

Q. Do you feel that you would weigh and consider the testimony of such a witness by the same standards as you would that of any other witness who might be called?

A. Yes.

Q. Let's assume that Mrs. Duncan should take the witness stand and testify in her own behalf. Would you deny to her the benefit of her own testimony merely because she happens to be accused of this offense?

A. No.

Q. You feel that you could weigh and consider her tes-[fol. 868] timony by the same standards as you would that of any other witness?

A. Yes.

Q. You understand from what you have heard in the courtroom that the law clothes her with the presumption of innocence?

A. Yes.

Q. Do you not? If you are accepted as a juror in this case, would you give to her the benefit of that presumption?

A. Yes.

Q. If you are accepted as a juror in this case, would you require the prosecution to prove to your satisfaction, to a moral certainty and beyond a reasonable doubt the guilt of Mrs. Duncan?

A. Yes.

Q. After a full and fair consideration of all of the evidence in the case you, yourself, had a reasonable doubt as to her guilt, would you hesitate to resolve that in her favor and find her not guilty?

A. No.

Q. Do you think you could do that irrespective of how your fellow jurors might feel about the case?

A. Yes.

Q. Do you subscribe to any of the local papers?

A. Yes, sir.

Q. Have you been a subscriber for quite some time past?

[fol. 869] A. Yes.

Q. Certainly as far back as November and December of last year?

A. Yes.

Q. Do you sometimes listen to news broadcasts on the radio?

A. Yes.

Q. And also on television?

A. Yes.

Q. Do you recall whether or not you have heard anything—read anything about this case?

A. Yes.

Q. In addition to having read about it, did you hear anything about it?

A. Yes.

Q. Do you recall whether or not you read any newspaper articles which purported to report the testimony that was taken before the Grand Jury in this matter?

A. No, I didn't.

Q. Do you recall whether or not you read anything in any newspaper articles which purported to report a confession of one Augustine Baldonado?

A. Just the headlines.

Q. Do you recall whether or not you read any report in any newspaper which purported to report a confession of one Luis Moya?

[fol. 870] A. That was headlines, too.

Q. And did you hear any radio broadcast which purported to report a confession of one Luis Moya?

A. No.

Q. In addition to—withdraw that for the moment.

Do you recall whether or not you read any article in any newspaper which purported to relate statements concerning this case purportedly given by Mr. Roy Gustafson, the District Attorney of this County?

A. No.

Q. In addition to what you read concerning this case have you talked about it with other people?

A. Yes.

Q. And have you heard it discussed by other people?

A. Yes.

Q. Can you tell us just approximately how many people you have talked to or heard discuss this case?

A. Oh, a dozen or so.

[fol. 871] Q. And these people whom you heard discuss the case, did you believe that what they said was the truth concerning this case?

A. I just figured that it was their opinion.

Q. I see. Do you know whether or not what they said to you was something that they knew or their own personal knowledge?

A. No, sir.

Q. You don't know that?

A. No, sir.

Q. Do you know whether any of those people that you heard discuss it, are likely to become witnesses in this case?

A. No.

Q. Have you yourself formed any opinion with respect to the guilt or innocence of Mrs. Duncan?

A. Just from what I read.

Q. From what you read you did form an opinion, is that right?

A. Yes.

Q. And was that opinion adverse to Mrs. Duncan?

A. Yes.

Q. In other words, that was an opinion that you believe that she was guilty of this offense, is that right?

A. Yes.

Q. Did you express that opinion to any other per-

[fol. 872] son?

A. No, sir.

Q. You never expressed it to any other person?

A. No, sir.

Q. Do you still have that same opinion as you sit in the jury box today?

A. Yes.

Q. Is that opinion such that it would require some evidence on the part of the defense to overcome?

A. No, sir.

Q. You say it wouldn't?

A. No, sir.

Q. You feel that that opinion which you now have, as you sit in the jury box today, would it have any tendency to influence your verdict in this case one way or the other?

A. No, sir.

Q. You think that you can act fairly and impartially, despite the fact that you have that opinion?

A. Yes, sir.

Q. Would it be any more difficult for you to act fairly and impartially in this matter, having that opinion, than it would be if you had never heard or read anything about this case and had no opinion?

A. I don't know.

Q. You can't say about that. Well, let's say, Mr. [fol. 873] Elkins, that instead of Mrs. Duncan being on trial here today, that your wife, Mrs. Elkins, was seated in this chair at the counsel table and that she was charged with the identical offense that is charged against Elizabeth Duncan, and you wanted your wife to be tried before 12 men and women who would be absolutely unbiased and unprejudiced, who would render a fair and impartial verdict in this matter. Do you think that you would be willing to trust the fate of your wife to 12 men and women of your present frame of mind?

A. Yes, sir.

Q. You feel that you would be satisfied with whatever verdict they might render in the matter, is that right?

A. Yes, sir.

Q. In other words, you think that whatever the verdict might be, it would be one that would be absolutely fair and impartial?

A. Yes, sir.

Q. Do you think that in your present frame of mind, that if there were 12 other people of the same frame of mind that you now have, that the verdict would not be influenced in any way by the fact or the opinion which those 12 people held at the outset of the trial?

A. I didn't get that question.

Q. Well, you have an opinion right now that Mrs. Duncan is guilty, don't you, as you sit in the jury box today? [fol. 874] A. I have formed an opinion, yes.

Q. What?

A. I have formed an opinion, yes.

Q. And you still have that opinion, is that right?

A. Yes.

Q. And my question is this: If your wife were on trial, do you think that she could get a fair and impartial trial at the hands of 12 people who had already formed an opinion that she was guilty and had that opinion at the outset of the trial?

A. Yes, sir.

Q. You think that she could?

A. Yes, sir.

Q. You don't think that you would have any difficulty whatsoever in setting that opinion aside and deciding this case solely and exclusively from the evidence as you hear it in the courtroom?

A. No, sir.

Q. You think that it would be rather difficult to do that?

A. No, sir.

Q. Do you know of any reason why you could not give to Mrs. Duncan a fair and impartial trial?

A. No.

Mr. Sullivan: No further questions.

[fol. 875] The Court: Pass for cause?

Mr. Gustafson: Your Honor, I believe that Mr. Sullivan is entitled to examine the other jurors first for cause.

Mr. Sullivan: I would just as soon.

Mr. Gustafson: All right.

Mr. Sullivan: All right.

Mr. Gustafson: However, Your Honor did not ask the other alternate juror about his opinions concerning the death penalty.

The Court: Mr. Fosselius—how do you pronounce your name?

The Prospective Juror: Fosselius.

The Court: Mr. Fosselius, you know the defendant in this case is charged with murder?

The Prospective Juror: Yes.

The Court: And if she should be convicted, that could carry the death penalty.

The Prospective Juror: Yes.

The Court: Do you have any conscientious scruples against the death penalty?

The Prospective Juror: Yes.
Mr. Gustafson: Challenge for cause.
The Court: All right, you are excused.

(The prospective alternate juror was excused.)

The Clerk: The name is Mrs. Willie C. Parr. She was previously excused on account of illness, I believe. [fol. 876] P-a-r-r.

Treva L. Allred—A-l-l-r-e-d. That is T-r-e-v-a—initial "L"—Allred. Mrs. Allred?

The Prospective Juror: Mrs.
The Court: Where do you live, Mrs. Allred?
The Prospective Juror: Fillmore.
The Court: Mrs.?
The Prospective Juror: Yes, sir.
The Court: How long have you lived in Ventura County?
The Prospective Juror: Fifteen years.

The Court: Well, you have been here long enough so that you know what this case is all about?

(The prospective juror nodded affirmatively.)

The Court: You know that the defendant is charged with murder?

(The prospective juror nodded affirmatively.)

The Court: If she should be convicted, the conviction could carry the death penalty.

(The prospective juror nodded affirmatively.)

The Court: You understand that?

(The prospective juror nodded affirmatively.)

The Court: Do you have any conscientious scruples against the death penalty?
The Prospective Juror: No; I do not.
The Court: All right, you may inquire.

[fol. 877] Mr. Sullivan:

Q. Mrs. Allred, may I inquire as to you business or occupation, please?

A. I am a part-time bookkeeper for Walsh Auto Electric in Fillmore.

Q. And is there a Mr. Fillmore?
A. Mr. Allred?
Q. Mr. Allred?
A. Yes, there is.
Q. May I inquire as to his occupation, please?
A. He works at the same place, auto electrician.
Q. Do you have a family of children?
A. I have two boys.
Q. Well, you know now what the charge is that is contained in this indictment against Mrs. Duncan, is that right?

(The prospective juror nodded affirmatively.)

Q. Is there anything about the nature of that charge that would cause you to entertain any bias or prejudice against her?
A. No.
Q. Have you or has any member of your family, or anyone near and dear to you ever been the victim of an assault or a crime of violence?
A. No.
Q. Have you ever had occasion to be a witness against any person charged with such a crime?
[fol. 878] A. No.
Q. Have you ever been connected with any law enforcement agency?
A. No.
Q. Has any relative of yours or anyone near and dear to you been connected in any manner with any law enforcement agency?
A. No.
Q. Suppose a law enforcement officer should testify in this case. Would you be apt to give any greater credence to the testimony of such a witness than you would any other witness, simply because or merely because he happens to be a law enforcement officer?
A. No, I will not.
Q. You feel that you could weigh and consider the testimony of such a witness by the same standard as you would that of any other witness?
A. Yes.
Q. Well, let's assume that Mrs. Duncan should take the witness stand and testify in this courtroom. Would

you be apt to deny her the benefit of her own testimony merely because she happens to be accused of this offense?

A. No, sir.

Q. You think that you could also weigh and consider her testimony by the same standard as you would that of any other witness?

[fol. 879] A. Yes.

Q. And you have heard what I have heretofore inquired about among some of the other ladies and gentlemen in the jury box with respect to the presumption of innocence and the necessity of the District Attorney proving a person guilty to a moral certainty and beyond a reasonable doubt. Would you answer those questions about the same as the rest of the ladies and gentlemen in the jury box would?

A. Yes.

Q. Now, do you subscribe to any newspaper?

A. Yes.

Q. One of the local papers?

A. Yes.

Q. And have you been a subscriber for some time?

A. Several years.

Q. At least you were a subscriber as far back as November and December of last year, is that right?

A. Yes.

Q. Do you sometimes listen to news broadcasts on the radio?

A. Occasionally.

Q. And television also?

A. Yes.

Q. Now let me ask you this: Did you ever read anything about this case?

A. Yes, I have.

[fol. 880] Q. Did you read any article in any newspaper which purported to report the testimony of the witnesses who appeared before the grand jury?

A. I don't believe I did.

Q. You have no independent recollection of reading anything about that particular matter, is that right?

A. No.

Q. Did you read any arfiele in any newspaper which purported to report a confession by one Augustine Baldonado?

A. I couldn't say. I knew about it but I don't know whether I read about it or heard it on the radio.

Q. Or heard it. Do you recall whether or not you read any article in any paper which purported to report a confession about one Luis Moya?

A. I will give the same answer to that as the other confession. I knew about it, but——

Q. You knew about it but you have no independent recollection as to whether that knowledge came to you from something that you read in the paper or something that you heard on the radio, is that right?

A. That is right.

Q. You do recall having either read it or heard it on a broadcast over the radio, is that fair to say?

A. Yes.

Q. All right. Do you recall whether or not you read [fol. 881] any newspaper article which purported to report any statements concerning this case that were purportedly made by Mr. Roy Gustafson, the District Attorney of this County?

A. I don't remember reading any.

Q. You don't remember. Well, in addition to what you did read and hear concerning this case, did you discuss it with other people?

A. Yes.

Q. And you heard other people discuss it also, mentioned something about it?

A. Yes.

Q. Could you tell me approximately how many people you discussed this case with or heard discuss it?

A. Approximately 10-12.

Q. And these people that you heard discuss it, do you know whatever they said concerning this particular case was something that they knew of their own personal knowledge?

A. I don't believe so.

Q. Do you know?

A. No, I don't know.

Q. Well, do you know whether any of these people that you heard discuss this case might possibly be witnesses in this matter?

A. Well, I wouldn't know that.

Q. Well, as a result of what you—withdraw that for a [fol. 882] moment. The things that you heard these other people say concerning this case, did you believe what they said was the truth?

A. I had no reason to believe it was the truth.

Q. Did you have any reason to disbelieve it?

A. No.

Q. Well, as a result of what you read or heard concerning this case, what you read was by news items on the radio or other people discussing it, whatever the source might have been, did you yourself form any opinion whatsoever with respect to the guilt or innocence of Mrs. Duncan?

A. No, I don't believe I did.

Q. You don't believe that it caused you personally to form an opinion one way or the other insofar as her guilt or innocence was concerned?

A. I don't believe it did.

Q. Did you ever express any opinion to any person?

A. No. I'm sure I didn't.

Q. You are sure you didn't. Now, if you are accepted as a juror in this case, do you think that what you did read or hear in the past concerning this particular case would influence you in any manner in arriving at a verdict in this case?

A. No, sir, it wouldn't.

Q. Do you think that you could decide this case solely and exclusively from the evidence as you hear it in this [fol. 883] courtroom?

A. Yes, sir, I could.

Q. Do you think that you could decide it just as fairly and impartially as if you had never read anything about it or heard anything about it in the past?

A. I could.

Q. And let's assume that you are on trial here today instead of Mrs. Duncan. Would you want to be tried before a jury of 12 people of your present frame of mind?

A. I wouldn't be afraid to.

Q. That is all I wanted to know. You wouldn't be afraid to?

A. No.

Q. Do you feel that if you had a jury of 12 people in

your present frame of mind, that you would receive an absolutely fair and impartial verdict? Is that it?

A. Yes, sir.

Q. Do you know of any reason whatsoever, Mrs. Allred, why you could not act fairly and impartially as a trial juror in this matter?

A. No.

Mr. Sullivan: Thank you. Pass for cause.

Mr. Gustafson: You pass both jurors for cause?

Mr. Sullivan: Yes.

Mr. Gustafson:

Q. Mr. Elkins, do you know Mr. Sullivan or Mr. Frank Duncan or Mrs. Elizabeth Duncan?

[fol. 884] A. No.

Q. Do you know, Mrs. Allred?

A. No.

Q. Mrs. Allred, with respect to your attitude in this case, would you be biased in favor of Mr. Sullivan's side of the case merely because he has a living person as his client there and I don't have any particular person as my client but represent the People of the State of California?

A. No, I wouldn't.

Q. How about you, Mr. Elkins?

A. No.

Q. I take it, Mr. Elkins, that with respect to all witnesses in this case, whoever they might be, you would apply the rules given to you by Judge Blackstock as to the manner in which you are to weigh and judge their testimony?

A. Yes, sir

[fol. 885] Q. How about you, Mrs. Allred, would you do the same thing?

Prospective Alternate Juror Allred: Yes, sir.

Mr. Gustafson:

Q. Suppose this, Mrs. Allred, you are here to try to ascertain from the evidence presented to you what the truth is and suppose that there are with respect to at least some points in the lawsuit, some differences in the

testimony, with the witnesses for one side saying such and such is so and the witnesses on the opposite side saying that isn't so, testifying as to facts. This is a conflict in the evidence, as we call it. This is what the juror's duty is, to try to resolve and decide. Some people would say, "Well, so long as there is a conflict, then how can anybody possibly decide a question and be convinced beyond a reasonable doubt? Therefore, as soon as there is a conflict, there is a reasonable doubt and, therefore, the person on trial is not guilty." Do you have any such frame of mind?

A. No.

Mr. Gustafson: How about you, Mr. Elkins?

Prospective Alternate Juror Elkins: No.

Mr. Gustafson:

Q. So, Mrs. Allred, with respect to a situation like that you would do your best to determine what the truth is in that, even if it means having to reject the testimony of some witness as being not worthy of belief; is that true?

A. That's right.

[fol. 886] Mr. Gustafson: Is that the way you feel about it, Mr. Elkins?

Prospective Alternate Juror Elkins: Yes.

Mr. Gustafson:

Q. Now, would you, Mrs. Allred, with respect to all the matters that Judge Blackstock tells you about so far as the rules of law are concerned, would you follow his instructions whether you believed them to be good law or bad law?

A. Yes, sir.

Mr. Gustafson: Mr. Elkins, it wouldn't make any difference to you, would it, what your personal beliefs might be as to the wisdom of a particular rule of law? If Judge Blackstock tells you that is the rule, you will go by it, won't you?

A. Yes.

Mr. Gustafson:

Q. Now, Mrs. Allred, if I prove that Elizabeth Duncan is guilty by the standards that Judge Blackstock tells you; namely, by proof beyond a reasonable doubt, would you have any hesitancy in voting her guilty?

A. No.

Q. Regardless of the consequences that such a verdict may entail?

A. Not if you proved her guilty.

Q. If I proved her guilty. How about you, Mr. Elkins?

Prospective Alternate Juror Elkins: I feel the same [fol. 887] way.

Mr. Gustafson: You feel the same way. Well, now, Mrs. Allred, you wouldn't impose upon me, would you any burden of going further than the law requires; in other words, to prove her guilty beyond any doubt whatever before you would return a verdict of guilty, would you?

A. No.

Q. Realizing, as I believe you do, from that answer that that is an impossible thing. That is why the law doesn't require it, anything that is impossible.

Do you feel the same way about it, Mr. Elkins, that you wouldn't impose upon me any additional burden than the law requires?

Prospective Alternate Juror Elkins: No.

Mr. Gustafson:

Q. Mrs. Allred, if you are convinced beyond a reasonable doubt about the guilt of the defendant and you are deliberating and if you become a member of the regular jury instead of an alternate juror, and deliberate with them, and some of the other jurors have a different opinion, as long as you maintained your conscientious opinion that the defendant was guilty, you would continue to vote that way, wouldn't you?

A. Yes.

Mr. Gustafson: How about you, Mr. Elkins?

Prospective Alternate Juror Elkins: Yes.

Mr. Gustafson:

Q. Now, Mr. Elkins, in this case, as in any case, there is a possibility that one might become, for example, [fol. 888] sympathetic with the defendant for one reason or another. Now, if the Judge tells you that you are to base your verdict solely on the basis of the evidence in court as to whether she is guilty or not guilty, and you are not to allow sympathy to influence that verdict, will you follow that instruction?

A. Yes, sir.

Q. You can and you will?

A. Yes.

Mr. Gustafson: And you, Mrs. Allred?

Prospective Alternate Juror Allred: Yes.

Mr. Gustafson: You can and you will?

Prospective Alternate Juror Allred: Yes.

Mr. Gustafson:

Q. Mrs. Allred, I understood you to say to Judge Blackstock that you did not have any conscientious opinion respecting the death penalty which would keep you from voting for a verdict of guilty, knowing that one of the two penalties for that crime is death in the gas chamber; is that right?

A. That's right.

Mr. Gustafson: And you have no such conscientious opinion concerning the death penalty, Mr. Elkins, that would preclude you from voting for such a verdict; is that correct?

Prospective Alternate Juror Elkins: That is true.

Mr. Gustafson:

Q. How about this, Mr. Elkins, do you have any opinion regarding the applicability of the death penalty which would [fol. 889] cause you to say that no matter how richly deserved it might be for the particular crime committed and for the background of the defendant who committed it, you wouldn't ever impose it upon a defendant who is a woman?

A. I don't believe that.

Q. You don't have that thought?
A. No, sir.

Mr. Gustafson: Do you, Mrs. Allred?
Prospective Alternate Juror Allred: No, I don't.

Mr. Gustafson:

Q. How about this, Mrs. Allred, if the Judge tells you that a person can be guilty of first degree murder, under certain instructions which he will give you, who encourages or advises someone else to commit a killing, and that person does commit the killing, and if you should find that Mrs. Duncan, the defendant here, is guilty of first degree murder under those rules, do you have any mental reservations regarding the applicability of the death penalty which would say that under no circumstances would you ever impose it upon a person who didn't actually do the killing, but one who is guilty of first degree murder for having somebody else do it?
A. No, I don't.
Q. You don't have any such mental reservations?
A. No.

Mr. Gustafson:

Q. Mr. Elkins, you don't draw any line there, do you, and say that the death penalty isn't applicable to one who didn't personally do the killing but is, nevertheless, guilty [fol. 890] of first degree murder?
A. No.

Mr. Gustafson:

Q. Can you, Mrs. Allred, think of any reason why you might not act fairly and impartially toward my side of the case, the People of the State of California?
A. No, I can think of no reason.
Q. You can be as fair to my side as you would to Mr. Sullivan's side?
A. Yes.

Mr. Gustafson: And you, Mr. Elkins? Same way?
Prospective Alternate Juror Elkins: Yes.
Mr. Gustafson: Pass for cause.

The Court: All right, the peremptory is with the People.

Mr. Gustafson: Pass peremptory.

The Court: The peremptory is with the defendant.

Mr. Sullivan: The defendant will excuse Mr. Elkins.

(Prospective alternate juror excused.)

The Court: Draw another name.

The Clerk: Edward L. Cordell, C-o-r-d-e-l-l. Edward L. Cordell.

The Court: Where do you live, Mr. Cordell?

The Prospective Alternate Juror: Near Oxnard.

The Court: How long have you lived there?

The Prospective Alternate Juror: About seven and a half years.

[fol. 891] The Court: Have you ever served on a jury in a criminal case?

The Prospective Alternate Juror: No, sir.

The Court: You have been here long enough so you know what the case is all about?

The Prospective Alternate Juror: Yes.

The Court: You know the defendant is charged with murder?

The Prospective Alternate Juror: Yes.

The Court: You understand that if she should be convicted, the verdict might carry the death sentence?

The Prospective Alternate Juror: I understand that.

The Court: Do you have any conscientious scruples against the death penalty?

The Prospective Alternate Juror: No, sir.

The Court: All right, you may inquire.

Mr. Sullivan:

Q. Mr. Cordell, may I inquire as to your business or occupation, please?

A. I am an electronics engineer.

Q. An electronics engineer?

A. Yes, sir.

Q. Are you married, Mr. Cordell?

A. Yes, sir.

Q. Do you have children?

A. Yes.

Q. You understand from what you have heard during [fol. 892] this past week what Mrs. Duncan is charged with here, don't you?

A. Yes.

Q. Have you or has any member of your family or anyone near and dear to you ever been the victim of a crime of violence or passion?

A. No.

Q. Or ever had occasion to be a witness against any person charged with such a crime?

A. No.

Q. Have you ever been connected in any manner with any law enforcement agency?

A. I never have.

Q. Any relatives of yours or anyone near and dear to you connected in any manner with any law enforcement agency?

A. I understand that my father was sometime before I was born, a deputy sheriff.

Q. That is going pretty far back.

A. I'm afraid so.

Q. All right. Well, let's say that the family history recalls that your father at one time was a law enforcement officer. Would that fact in and of itself cause you to give any greater credence to the testimony of a law enforcement officer, if one should be called in this case?

A. No.

Q. Do you think that you could weigh and consider [fol. 893] the testimony of such a witness by the same standard that you would any other witness who might be called?

A. I believe I could.

Q. Let's assume that Mrs. Duncan takes the witness stand and testifies as a witness in her own behalf. Would you be apt to deny her the benefit of her own testimony merely because she happened to be accused of this offense?

A. No.

Q. You have heard what I have heretofore asked of the other jurors with respect to the law that presumes persons to be innocent until the contrary is proved beyond a reasonable doubt?

A. Yes, I have heard that.

Q. If I were to ask you the same questions along that particular line, would your answers be the same as those given by the other ladies and gentlemen?

A. Yes.

Q. Do you subscribe to any newspaper?

A. Yes.

Q. One of the local papers?

A. The Oxnard Press-Courier.

Q. All right. And do you sometimes listen to news broadcasts on the radio?

A. Yes, sir.

Q. And TV, as well?

A. No.

[fol. 894] Q. No television. Well, have you been a subscriber to the local paper over there for some time past?

A. Yes.

Q. At least as far back as last November or December?

A. Yes.

Q. Have you read anything about this case?

A. I have read just about everything that was in the paper.

Q. You are a pretty avid newspaper reader then, I take it. Did you read any articles which purported to report the testimony of witnesses who appeared before the Grand Jury?

A. Yes.

Q. And did you read any articles which purported to report a confession by one Baldonado?

A. Yes, I read that.

Q. Did you read any article which purported to report a confession by one Moya?

A. Yes.

Q. Did you read any articles which purported to report any statements concerning this case that were reportedly made by Mr. Roy Gustafson, the District Attorney of this County?

A. Yes, I believe I did.

Q. Did you hear any radio broadcasts concerning this case?

A. I don't believe I heard anything which said more than just repeat what the headlines were that I previously read.

[fol. 895] Q. In addition to what you read and heard on the radio, did you discuss this case with any other persons?

A. Yes, I have done so.

Q. Have you discussed it with many people?

A. Perhaps 8 or 10.

Q. And you heard them make some statements concerning it also?

A. Well, the discussions in the statement really did not concern the facts, but more or less generalities. You understand what I mean?

Q. Well, when you say "generalities", I mean it was just a discussion of the case in general; is that what you mean?

A. The fact that such a thing had been reported, rather than the details of what had been reported.

Q. Did you believe what you heard anybody else say about it?

A. That's what I was getting at when I said they spoke in generalities. There was nothing in what they said for you to either believe or disbelieve.

Q. Well, from what you read and whatever discussion you did have regardless of what it may have been, concerning this case, did you, yourself, form any opinion with respect to the guilt or innocence of Mrs. Duncan?

A. Yes, I did.

Q. This opinion which you formed, was it one that was [fol. 896] adverse to my client, Elizabeth Duncan?

A. It was.

Q. In other words, you formed an opinion that she was guilty of this offense; is that right?

A. I did.

Q. Did you ever express that opinion to anyone else?

A. I don't believe I ever did.

Q. I see. Well, do you still entertain that same opinion as you set in the jury box today?

A. Yes.

Q. Is that opinion such that it is likely to influence your verdict in this matter?

A. No, sir.

Q. Is the opinion which you formed such that you would require some evidence on the part of the defense to overcome?

A. No.

Q. Do you feel that if you are accepted as a juror in this case, that you can completely disregard that opinion?

A. Yes.

Q. Do you think that you can act just as fairly and impartially as a trial juror in this case as though you had never heard anything about it in the past and never had formed any opinion about it?

A. I believe I could.

Q. Let's see, assume that—I think you said you were [fol. 897] married, did you?

A. Yes.

Q. Let's assume that Mrs. Cordell were on trial here today charged with this identical offense. You wanted her to have a trial at the hands of 12 men and women who would be absolutely unbiased and unprejudiced and who would render a fair and impartial verdict. Would you be willing to trust the fate of your wife to a jury composed of men and women of your present frame of mind?

A. I heard you ask that question before and I'm just unable to make such a transformation.

Q. Let me put it this way: Suppose it was your wife on trial and you had 12 people on the jury that at the outset of the trial before they heard any evidence all 12 of them were of the opinion that your wife was guilty because of what they had read or heard discussed about the case in the past. Do you think that they could act fairly and impartially in returning a verdict in the case?

A. I don't know whether the others could or not.

Q. Would you be satisfied to have them decide the guilt or innocence of your wife if they were 12 people of that opinion?

A. That's what I said. I could not put myself in that place. I just can't imagine the situation in such a way as to honestly judge whether I would or would not, if my wife were on trial.

[fol. 898] Q. It is pretty difficult—I'm sorry. I didn't mean to interrupt.

A. If my wife were on trial, I would be very suspicious of every one who sat down in the jury box. That is why I say I cannot imagine really enough to answer that question.

Q. You don't believe that if your wife had to go to trial

before a jury composed of 12 people who before they heard any part of the evidence had already formed an opinion that she was guilty, you don't believe that she would get a fair and impartial trial at their hands, do you?

A. I can't answer that.

Q. Don't you think that a verdict at the hands of 12 individuals like that might be influenced by some bias or prejudice?

A. It would seem to me that the bias or prejudice would have to be expressed as each fact is brought out, and that once the facts are arranged in order and jury considers them, they would separate themselves from the bias.

Q. Well, then would you be willing to trust the fate of your wife to those 12 people?

A. I can't answer that.

Q. Well, I am speaking of 12 people of your present frame of mind.

A. I understand.

Q. And you are the only one that knows your own frame [fol. 899] of mind.

A. I know my own mind.

Q. You still find it difficult to answer that?

A. I cannot put myself in the position of considering my wife's fate in the same terms.

Q. You could put the fate of some stranger in the hands of such a jury; is that it?

A. Well, where I would not personally be concerned to the point where I would be suspecting everybody who had anything to do with it, yes, I think I could.

Mr. Sullivan: We are going to challenge Mr. Cordell, your Honor.

Mr. Gustafson:

Q. Mr. Cordell, you are in the frame of mind, as I understand it, that notwithstanding the opinion that you have formed, you would, in reaching a verdict, completely disregard anything you have read, completely set aside your opinion, and reach your verdict solely on the basis of the evidence produced in court?

A. I would.

Q. And with respect to the law applicable to that evidence, you would decide it solely on the basis of the law given to you by Judge Blackstock?

A. I would.

Q. And so, regardless of the opinion you might hold, you would find the defendant not guilty, despite your opinion, if I did not prove my evidence in court here, beyond [fol. 900] a reasonable doubt that she was guilty?

A. I would find her not guilty.

Q. Yes, and you wouldn't require Mr. Sullivan to produce any evidence whatever; that is, if——

A. None whatever, that's correct.

Q. In other words, he doesn't have to prove Mrs. Duncan's innocence?

A. If that is Judge Blackstock's instruction, that is correct.

Q. And if I don't prove her guilt, then automatically she is entitled to be acquitted?

A. That's right.

Q. She does not have to prove her innocence, but I, on the other hand, must prove her guilt in order to be entitled to a verdict of guilty? You would follow that?

A. I would follow that.

Q. So your frame of mind then is such that, notwithstanding your present opinion based on what you read or heard, or both, you could and you would act fairly and impartially; isn't that correct?

A. I have already said that. Yes.

[fol. 901] Mr. Gustafson: I submit the juror is not disqualified.

The Court: Well, just suppose that you yourself were on trial—because you are a law abiding citizen, it is not likely that you would be—but suppose that you were on trial for some alleged crime, and a jury was being selected to try you, and you finally got 12 jurors who were all of the same frame of mind in which you are now. Would you be willing to be tried by such a jury?

The Prospective Juror: I am trying to imagine myself in that position. If I were in that position, I would want people that had never heard of it.

The Court: Suppose that you actually were in that position. That is not impossible, is it?

The Prospective Juror: If I were in that position, I would want people that had never heard of the crime before.

The Court: Would you be willing that you should be tried by 12 people who were of the same frame of mind that you are now in? If we select a jury, presumably that jury have all said that they would try the case fairly and impartially and strictly and solely on the evidence on the evidence educed here in the courtroom, or they wouldn't be on the jury, and they had sworn to do that. Would you be willing to be tried by such a jury, if you had to be tried by someone?

The Prospective Juror: If I had to be tried, I guess so.

[fol. 902] The Court: What?

The Prospective Juror: Yes, sir.

The Court: You would be.

Mr. Gustafson: Your Honor, in the light of the juror's hesitancy on this thing, I am going to withdraw my objection to counsel's challenge.

The Court: Well, I was going to allow it anyway. The challenge is allowed. You are excused.

(The prospective juror was excused.)

The Clerk: Floria—initial "L"—LaFrance—L-a F-r-a-n-c-e. Floria L. LaFrance. Was she excused?

Mr. Gustafson: Excused, according to my sheet.

The Court: Wasn't she excused?

The Clerk: I think so.

Mr. Sullivan: Yes. I saw her excused.

The Clerk: She was excused on the 17th. She is a city employee of Oxnard.

Mrs. Clara—"J"—Trom—T-r-o-m.

The Court: Where do you live, Mrs. Trom?

The Prospective Juror: Ventura.

The Court: Ventura?

The Prospective Juror: Yes, sir.

The Court: How long have you lived in this county?

The Prospective Juror: Seventeen years.

The Court: Did you ever serve on a jury in a criminal case?

[fol. 903] The Prospective Juror: No, I haven't.

The Court: You have been here for several days and you know what this case is all about?

The Prospective Juror: Yes.

The Court: You know that the defendant is charged with murder?

The Prospective Juror: Yes.

The Court: And you know that if she should be convicted, that there would be one of two penalties, one of which could be death. Do you have any conscientious scruples against the death penalty?

The Prospective Juror: Yes, I do.

Mr. Gustafson: Challenge for cause.

The Court: You are excused. Call another name.

(The prospective juror was excused.)

The Clerk: Mrs. John Coultas—C-o-u-l-t-a-s.

The Court: Where do you live, Mrs. Coultas?

The Prospective Juror: Pardon me?

The Court: Where do you live?

The Prospective Juror: I live in Oxnard.

The Court: You have lived there all of your life, haven't you?

The Prospective Juror: For 20 years.

The Court: Did you ever serve on a jury in a criminal case?

The Prospective Juror: No, sir.

[fol. 904] The Court: Well, you have been here several days, so you know what this case is all about?

The Prospective Juror: Yes.

The Court: You know the defendant is charged with murder?

(The prospective juror nodded affirmatively.)

The Court: And you know that a conviction might carry the death penalty?

(The prospective juror nodded affirmatively.)

The Court: Do you have any conscientious scruples against the death penalty?

The Prospective Juror: No.

The Court: You may inquire.

Mr. Sullivan: Thank you, Your Honor.

Q. Mrs. Coultas, you know from what you have already heard, that my client, Elizabeth Duncan, is charged with the crime of the murder of one Olga Duncan?

A. Yes.

Q. Have you or has any member of your family or anyone near and dear to you ever been a victim of a crime of violence, of assault?

A. No.

Q. Ever been a witness against a person charged with such a crime?

A. No.

Q. It is Mrs. Coultas, is it not?

[fol. 905] A. Yes.

Q. May I inquire as to your business or occupation, please?

A. I'm a housewife and mother.

Q. Is there a Mr. Coultas?

A. Yes.

Q. And may I inquire as to his business, please?

A. He owns a service station.

Q. Service station?

A. Yes, sir.

Q. Mrs. Coultas, have you ever been connected with any law enforcement agency?

A. No, never.

Q. Any relative of yours or anyone near and dear to you ever been connected with any law enforcement agency?

A. Not that I know of.

Q. It might be that some law enforcement officers may testify in this case. If that should happen, would you be apt to give any greater credence to their testimony merely because they happened to be law enforcement officers?

A. No, I wouldn't.

Q. You feel that you could weigh and consider their testimony by the same standard as you would that of any other witness, is that right?

A. Yes.

Q. Well, let's assume that Mrs. Duncan takes the witness [fol. 906] stand and testifies as a witness in her own behalf. Would you be apt to deny her the benefit of her own testimony merely because she happens to be charged with this offense?

A. No.

Q. You think that you could also weigh and consider her testimony by the same standard as you would that of any other witness? Is that right?

A. Yes.

Q. Do you have any children?

A. Yes, I do.

Q. Now, do you subscribe to any of the local papers?

A. Yes.

Q. Have you been a subscriber for quite some time past?

A. Yes.

Q. At least as far back as November and December of last year? You were a subscriber?

A. Yes.

Q. Did you ever listen to any radio broadcast of news events?

A. No.

Q. Television newscasts?

A. No, I don't.

Q. You get most of your news from the newspapers, is that it?

[fol. 907] A. Yes, that is right.

Q. Do you recall whether or not you have read anything about this case?

A. Yes.

Q. Do you recall whether or not you have read any newspaper articles which purported to report the testimony of witnesses who appeared before the grand jury in this matter?

A. Yes, I did. I read one of those articles and I don't know whether it was the first one or the second one, the first or second names you mentioned.

Q. You read it in serial form?

A. I read the first one.

Q. Do you know whether you read any articles, newspaper articles, which purported to report the confession of one Augustine Baldonado?

A. I don't know whether it was his or the other one I read.

Q. Well, you read some newspaper report, I take it then?

A. Yes, I did.

Q. That purported to report a confession by either one Augustine Baldonado or one Luis Moya, is that correct?

A. Yes.

Q. Did you read any newspaper article which purported [fol. 908] to report any statements concerning this case that were made by Mr. Roy Gustafson, the District Attorney of this County?

A. Well, I don't remember.

Q. You don't specifically recall that particular article or having read such an article? Let's put it that way.

A. I don't specifically recall the article, no.

Q. Now, in addition to what you did read, did you discuss this case with anyone?

A. Yes, I did.

Q. And heard it discussed by other people?

A. Yes.

Q. Could you tell me just approximately how many people you either discussed it with or heard discuss it?

A. Oh, I would say eight. Eight or ten maybe.

Q. Eight or ten?

A. Yes.

Q. And these people that you heard discuss it, they made some statements concerning this particular case, is that it?

A. Well, they were discussing what they had read in the paper, their suppositions, and such as that.

Q. Did you believe the statements that you heard these people make, to be true?

[fol. 909] A. I have no knowledge of that.

Q. Well, I'm just asking if you believe what they said was true?

A. It was just a discussion of what was printed in the paper. I had no reason to disbelieve it or to believe it.

Q. All right. Do you know whether the statements which you heard these people make concerning this case, were statements of facts or circumstances that they knew of their own personal knowledge?

A. Not that I know of.

Q. Do you know whether or not any of those persons are likely to be witnesses in this case?

A. I doubt it. I don't know.

Q. You wouldn't know. Well, let me ask you this: as a result of what you read and the discussions that you had with other people concerning this case, did you yourself form any opinion with respect to the guilt or innocence of Mrs. Duncan?

A. Well, I formed some opinion, yes.

Q. The opinion which you formed, was that one that was adverse to Mrs. Duncan?

A. Yes.

Q. And did you form an opinion that Mrs. Duncan was guilty of this offense?

A. Based on what I read, I would say yes.

[fol. 910] Q. Was that opinion based primarily on what you read or was it based not only on what you read but what you heard other people say concerning this case, or was it both?

A. Mostly on what I read.

Q. Mostly on what you read yourself?

A. (The prospective juror nodded affirmatively.)

Q. Do you still have that opinion as you sit in the jury box today?

A. Yes.

Q. Is that opinion such that it is likely to affect your verdict in this matter if you happen to be called upon to act as a trial juror in this case?

A. No.

Q. Do you feel that you could completely set aside that opinion, disregard it completely in arriving at a verdict, if you should be called upon to act as a trial juror?

A. Yes, I do.

Q. Do you think you can decide this case solely and exclusively from the evidence that you hear in this courtroom?

A. Yes, I do.

Q. Let's assume that you are on trial here today, charged with this offense. Would you be willing to place your fate in the hands of 12 men and women who are of the [fol. 911] same frame of mind that you now are?

A. Yes.

Q. Do you think that if you did that, that you would get a fair and impartial trial?

A. Yes.

Q. Do you think that if you had a jury composed of men and women of your present frame of mind, that their verdict wouldn't be influenced one way or the other by the opinion which they all shared at the outset of the trial, that you were guilty?

A. Would you say that again? My mind wandered.

Q. Well, it is a little awkward the way I asked the question. Your present opinion, as you sit in the jury box today, the present opinion is that Mrs. Duncan is guilty, is that right?

A. (The prospective juror nodded affirmatively.)

Q. You have that opinion right now, haven't you?

A. Yes.

Q. Well, let's say that there were 12 people in the jury box that had the same opinion that you now have, that the person on trial was guilty, and you were that person on trial. Do you think that those 12 people who started out at the outset of the trial with the opinion that you were guilty, could render a fair and impartial verdict, if you were the one who was on trial?

A. I think if those people set aside their opinions and [fol. 912] were fair-minded people and listened and weighed all the evidence in the courtroom, I think that I would get a fair trial.

Q. You think if they were all of your present frame of mind, do you think that they could all set it aside?

A. If they were like me.

Q. That is what I mean. You would have to imagine people just like you, of your own present frame of mind, because you can't read their minds. I realize that.

A. Yes, I think they could.

Q. Do you know of any reason why you could not give to Mrs. Duncan a fair and impartial trial?

A. No.

Mr. Sullivan: All right. Thank you, Mrs. Coultas. No further questions.

Mr. Gustafson:

Q. Mrs. Coultas, I notice that when Judge Blackstock asked you your attitude with respect to the death penalty, there was some bit of hesitation on your part. I wondered whether you have any quarrel with or prejudice against the rule of law that Judge Blackstock would give you concerning the fact that on the penalty issue, and that is if this jury should get to that—in other words, if Mrs. Duncan should be found guilty of first degree murder, the second phase of the trial, the penalty—that the law does [fol. 913] not dictate any preference with respect to the

two possible penalties, life imprisonment or death, that that matter rests solely in the discretion of the jury. Now, is that acceptable to you? Could you follow that instruction?

A. Yes, I would. I hesitated because I was thinking of the gravity of the case.

Q. Yes. It is a grave decision to make for anyone sitting on a jury, and I don't blame you at all for considering that in making your answer.

However, on the other hand, I want to make sure that with respect to this, you don't have any mental reservations in your mind that you now start out with, that the death penalty is only applicable in certain situations and not in others.

A. No.

Q. And do you have any reservations, for example, that it shouldn't ever be applied to a woman, that it makes any difference whether it is a woman or a man who is guilty of first degree murder?

A. No.

Q. Do you have any mental reservations which would indicate to you that while the penalty of death for first degree murder is all right for somebody who personally does the killing, it should never be applied to a first degree murderer who has aided or encouraged or advised some-[fol. 914] one else to do the killing?

A. No.

Q. So that you then would be willing, if you sat as a juror in this case, and if the jury got to the penalty issue, to accept the death penalty as one of the two equally applicable penalties to a given situation, is that right?

A. Yes.

Q. And you will listen to the evidence that had been introduced at the trial on the issue of guilt and any additional evidence that is introduced at the trial of the issue of penalty, and base your decision as to that applicable penalty on what you had heard?

A. Yes.

Q. Realizing the gravity of the consequences of a verdict of guilty, would you have any hesitance, if you were convinced beyond a reasonable doubt that Mrs. Duncan is guilty, would you have any hesitancy in returning the verdict stating that she is guilty?

A. No.

Q. And you wouldn't, simply because this is a type of case which does carry the penalty about which you spoke, apply a different burden of proof on me than you would in any other case, criminal, that was being tried, would you? In other words, in any criminal case, whether it be for this crime or for any other crime, my burden is only to [fol. 915] prove the defendants guilty beyond a reasonable doubt.

A. (The prospective juror nods affirmatively.)

Q. And that is all that you would require of me, is it not?

A. (The prospecitve juror nodded affirmatively.)

Q. Mrs. Coultas?

A. Yes.

Q. And you wouldn't say, "Well, because this is a murder case, I am going to require Mr. Gustafson to prove it further than that. This is such a serious case, that I am going to make him prove his case beyond any doubt whatever"?

A. No.

Q. In other words, are you perfectly acceptable, Mrs. Coultas, to accepting the rule of law stated to you by Judge Blackstock, that even though this is a murder case, my burden of proof is still the same as it is in any case; namely, that I have to prove the defendant guilty beyond a reasonable doubt before you can return a verdict?

A. That is right.

Q. And if I do that, you won't, because it is a murder case, say, "Well, that is not enough. You have got to bring in some more evidence to convince"?

A. No.

Q. Similarly, if there are conflicts in the evidence, and [fol. 916] do you understand what I mean by that, from the questions I have asked other jurors?

A. Yes, I understand.

Q. In other words, testimony both ways left for you to decide, just merely and simply because there are conflicts, wouldn't cause you immediately then to say, "Well, that is enough to create a reasonable doubt in my mind"?

A. No.

Q. In other words, you would realize that it is your duty to weigh the evidence and to try to analyze it consider where the truth lies, isn't that right?

A. That is right.

Q. And if it is necessary, in order to reach a certain conclusion, that you accept some evidence and reject some other evidence as being untruthful, you would do that, wouldn't you?

A. Yes, I would.

Q. Well, do you have any reason why you couldn't give my side of the case, called the People of the State of California, the plaintiff in this case, just as fair a trial as you would ve to the defendant, Mrs. Duncan?

A. e no reason why I couldn't.

Mr. Gustafson: Pass for cause.

The Court: All right. As I have it, the peremptory is with the People.

[fol. 917] Mr. Gustafson: Pass peremptory.

The Court: The peremptory is now with the defendant.

Mr. Sullivan: We will pass, Your Honor.

The Court: What?

Mr. Sullivan: We will accept the alternates.

The Court: You pass, do you?

Mr. Sullivan: Yes, Your Honor.

The Court: All right, swear the alternates.

(The alternate jurors were sworn.)

[fol. 918] The Court: Well, the Court better take a brief recess.

Mr. Gustafson: Your Honor, may I approach the bench, please?

(Whereupon proceedings were had at the Judge's bench, outside the hearing of the jury and the Court Reporter.)

The Court: Ladies and gentlemen of this jury panel, all of you except those who are on the jury either as regular jurors or alternates, are now entirely excused. We have a jury, so your services will not be needed any longer. You are excused.

Ladies and gentlemen of the jury, the Court is about to adjourn until next Tuesday morning at 10:00 o'clock. Monday is a holiday.

Remember, you must not discuss this case among yourselves or with anyone else, you must not form nor express any opinion about anything connected with this trial until the case has been finally submitted to you. And you will remember the rest of my admonition.

All right, you are all excused.

(Whereupon, at 5:02 o'clock P.M., the Court recessed proceedings until February 24, 1959, at 10:00 o'clock A.M.)

[fols. 1-93] The Court: That is, you are not contending that this Court was prejudiced, are you?

Mr. Sullivan: I am not contending that, your Honor. I am merely saying that if the law says that a judge who has formed an opinion is disqualified, all the more so it applies to a juror, who is a lay person. I don't mean to imply that your Honor ever expressed an opinion or was biased or prejudiced in this matter. Certainly not.

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PETITION NOT PRINTED

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 187

ELIZABETH ANN DUNCAN,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

BRIEF FOR PETITIONER

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BRIEF FOR PETITIONER

The Opinion Below

The Opinion of the California Supreme Court is reported at 53 Cal. 2d 803, 350 P. 2d 103 (R. 137).

Jurisdiction

The Opinion of the California Supreme Court was entered on March 11, 1960 (R. 137). The petition for writ of certiorari was filed on June 7, 1960, and was granted on June 27, 1960 (R. 152, 363 U.S. 840).

Questions Presented

1. Was petitioner's right to the trial guaranteed by the Due Process Clause of the XIV Amendment violated in view of the conduct of the District Attorney, the resulting publicity, and the other circumstances under which the trial was held?

2. Was there a violation of petitioner's right to a fair trial, as guaranteed by the Due Process Clause of XIV Amendment of the Constitution of the United States of America, where in a trial of a capital offense by jury, the trial court permitted to remain in the jury box and sit in judgment, three jurors who had entered the jury box with a fixed opinion as to petitioner's guilt, and retained such opinion while being examined on *voir dire*?

Constitutional Provision and Statutes Involved

Article I, Section 3, Constitution of the State of California, California State Senate Edition, 1951, page 3, provides as follows:

> "Sec. 3. The State of California is an inseparable part of the American Union, and the Constitution of the United States is the supreme law of the land."

The Constitution of the United States provides in pertinent part as follows:

Amendment XIV, Section 1:

> "... nor shall any State deprive any person of life, liberty, or property, without due process of law ..."

Section 190, Penal Code of the State of California, in part, provides:

"Every person guilty of murder in the first degree shall suffer death, or confinement in the state prison for life, at the discretion of the court or jury trying the same, and the matter of punishment shall be determined as provided in Section 190.1, . . . "

Section 190.1, Penal Code of the State of California, in part provides:

"The guilt or innocence of every person charged with an offense for which the penalty is in the alternative death or imprisonment for life shall first be determined, without a finding as to penalty. If such person has been found guilty of an offense punishable by life imprisonment or death and has been found sane on any plea of not guilty by reason of insanity there shall thereupon be further proceedings on the issue of penalty and the trier of fact shall fix the penalty. Evidence may be presented at the further proceedings on the issue of penalty, of the circumstances surrounding the crime, of the defendant's background and history, and of any facts in aggravation or mitigation of the penalty. The determination of the penalty of life imprisonment or death shall be in the discretion of the court or jury trying the issue of fact on the evidence presented, and the penalty fixed shall be expressly stated in the decision or verdict. The death penalty shall not be imposed, however, upon any person who was under the age of 18 years at the time of the commission of the crime. The burden of proof as to the age of said person shall be upon the defendant. . . .

" . . . If the defendant was convicted by a plea of guilty, the trier of fact shall be a jury unless a jury is waived. . . . "

Section 1033, Penal Code of the State of California, in part provides:

> "A criminal action pending in a superior court may be removed from the court in which it is pending on application of the defendant, on the ground that a fair and impartial trial cannot be had in the county. . . . "

Section 1239 (b), Penal Code of the State of California, provides:

> "(b) When upon any plea a judgment of death is rendered, an appeal is automatically taken by the defendant without any action by him or his counsel."

Section 1073, Penal Code of the State of California, in part, provides as follows:

> "(Particular causes of challenge: What are.)
>
> Particular causes of challenge are of two kinds:
>
> • • • • •
>
> Second. For the existence of a state of mind on the part of the juror . . . which will prevent him from acting with entire partiality . . . "

Section 1076, Penal Code of the State of California, in part provides as follows:

> ". . . but no person shall be disqualified as a juror by reason of having formed or expressed an opinion upon the matter or cause to be submitted to such juror, founded upon public rumor, statements in public journals, circulars, or other literature or common notoriety; provided, it appears to the court, upon his declaration, under oath or otherwise, that he can and will, notwithstanding such an opinion, act impar-

tially and fairly upon the matters to be submitted to him . . . "

Section 1069, Penal Code of California, in part provides as follows:

> "A peremptory challenge can be taken by either party, and may be oral. It is an objection to a juror for which no reason need be given, but upon which the court must exclude him."

Section 1070, Penal Code of California, in part provides as follows:

> "... If the offense charged be punishable by death, ... the defendant is entitled to twenty and the state to twenty peremptory challenges. ... "

Statement of the Case

On December 21, 1958, the body of Olga Duncan was found. Soon thereafter, with Luis Moya and Augustine Baldonado, petitioner was arrested.

The bizarre context in which these events occurred caused widespread newspaper publicity and excited enormous public interest (R. 6-8). The distillation of the newspaper accounts at the time of these arrests created these impressions and suspicions: Mrs. Duncan was deeply attached to her son, Frank Duncan, and had opposed her son's marriage on June 20, 1958 to Olga. On August 7, 1958, unknown to her son, she secured a fraudulent annulment of the marriage by impersonating Olga, and she agreed to pay Baldonado and Moya $6,000 to kill Olga.

Superimposed on this account were certain extraordinary statements of the District Attorney. On December 22, 1958, he issued a statement advocating the death penalty for

petitioner and the others which was published on the front page of the community's leading newspaper under the heading "D. A. Urges Death Term in Killings" as follows:

> "The brutal, calculated, revolting killing for hire of Olga Duncan is one of a number of horrible crimes which have recently been committed in California. I simply cannot understand how some of our leaders, in the face of these events, can seriously contend that the death penalty is not appropriate punishment for the perpetrators of such a crime.
>
> "Many persons contend that the death penalty does not deter murder. Frankly, I am sick of this illogical argument. Of course penalties do not completely deter crimes. Jail sentences do not completely deter drunken drivers, burglars, robbers or other criminals and death penalties do not completely deter murderers. But that is no reason to dispense with penalties.
>
> "Retaliation is a basic instinct of the human race. In civilized societies, the government takes over from the individual the job of retaliating against a wrongdoer. From biblical times, a life for a life has been recognized as just and fair.
>
> "The alternative in California a life sentence which permits a prisoner to be paroled in seven years, simply is insufficient retaliation. I hope the people of this state rise up against the propaganda drive[1] that has flooded us lately about the so-called evils of capital punishment. They must demand that California retain the death penalty to deal with situations such as the Duncan case" (R. 6).

In an affidavit opposing a change of venue the District Attorney purported to justify this statement by the following logic:

"My statement that the death penalty is appropriate for the perpetrators of the murder of Olga Duncan, cannot prejudice the defendants. The law of California is such that the defendants are guaranteed a fair trial. If, after such a trial, the defendants are found not to have perpetrated the crime, they obviously will not be prejudiced and my statement would be inapplicable to them. If, on the other hand, they are found guilty of first degree murder, then the statement will apply to them. The fact that it was made before the taking of testimony before the trial jury is of no consequence. In any case involving murder where the prosecutor seeks the death penalty, the fact that he will do so is always disclosed before the trial jury is selected by reason of the question asked of prospective jurors as to the entertainment of such conscientious opinions as would preclude their finding the defendant guilty and imposing the death penalty. Consequently, whether prospective jurors know that I will seek the death penalty as the appropriate punishment from reading the newspapers or from hearing me say so in court is immaterial" (R. 14-15—Baldonado).

Petitioner was indicted by the Grand Jury of Ventura County on December 26, 1958 (R. 2).

On December 30, 1958 a story appeared in the same newspaper purporting to be an interview with the District Attorney in which he stated why the death penalty was proper punishment for this crime. Among other things the District Attorney said:

"When you do catch 'em, and when you do convict 'em, what are you going to do with them . . . rehabilitate 'em?"

According to District Attorney Roy A. Gustafson, the chances of rehabilitating the three persons ar-

raigned today on charges of murder-for-hire are "awfully slim . . . and I don't want to take that kind of chance."

That is one of the reasons why he is going to ask for the death penalty against Mrs. Elizabeth Duncan, and her two accused accomplices—Augustine Baldonado and Luis Moya—in the hired slaying of nurse Olga Duncan.

Gustafson repeated his plans yesterday, and added that he expected the case would probably be mentioned when the new legislative campaign opens this year to do away with the death penalty.

"The most pertinent point in the death penalty is retribution. Anyone who says we must get away from the 'barbaric thought' of retribution is not being realistic.

• • • • •

"We deal in a punishment system with retribution. Society takes over for the individual who has been wronged, and it punishes the wrongdoer. Many crimes can't have retribution: rape, for instance. So we incarcerate, or fine or execute."

Retribution, he says, is one of four major points in any punishment. Another is deterrence, a third is rehabilitation. Rehabilitation's statistics are "pretty sad," he says. And any alternative to capital punishment usually involves life sentences without pardon or parole. A lifer without hope of ever leaving prison "has no hope and becomes a vegetable. Or worse, as we'll show you later."

But as far as rehabilitation goes, Moya was paroled a year ago after serving a year out of a 1-to-10 year term for marijuana possession. Gustafson says Moya was using marijuana when he was arrested in the Duncan murder case.

By the state's own figures, 48.8 percent of parolees wound up back in prison or jail within four years of being paroled. In the case of women, the rate was 57.5 percent. And the rate is going up, not down, he points out.

He commented that the possibility of putting California's third woman in the gas chamber does not present him with any qualms.

"This is appropriate punishment," he said, paraphrasing the judge in the Harvey Glatman case. And he adds: "What are you going to do, rehabilitate 'em?"[1]

Prior to her entry of plea, petitioner duly applied for a change of venue in accordance with Section 1033 of the California Penal Code. The application was denied without prejudice (R. 6-8).

The application was renewed before the impanelment of the jury (R. 24-29, 30). The renewed application was denied.

After the impanelment of the jury, but before it was sworn, the application was renewed again. This application was denied also (163, 164; 672-676).

On February 16, 1959, petitioner's jury trial started (R. 30), and on March 16, 1959, the jury found petitioner guilty of murder in the first degree (R. 64). On March 20, 1959, the jury sentenced petitioner to death (R. 74).

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[1] See Appendix B, Baldonado, containing the complete newspaper story from which the foregoing was taken. See R. 44-45 and page 6 of Exhibit 8 thereto. In response to the petitioner's citation of this newspaper story in connection with a motion to change venue, the District Attorney made an affidavit denying that he made any statement to the effect that Moya was using marijuana when he was arrested (R. 16, Baldonado). This affidavit made no other denials regarding the substance of the purported interview.

In the March 21, 1959 issue of the Ventura County Star-Free Press, the District Attorney is reported to have hailed the Duncan death verdict by stating that it should have the effect of heading off moves to abolish the death penalty in California (R. 68, Exh. A-36, Moya).

The heavy press coverage accorded to a sensational murder case in petitioner's trial was intensified by camera coverage of the trial proceedings.

The selection of a jury to try petitioner had commenced on February 16, 1959 (R. 154).

On direct examination on *voir dire* during the impanelment of the jury, prospective Juror Porter testified, among other things, to the following (R. 274 to 283):

(1) As a result of discussions with 15 or 20 people, and from what he read, he formed an opinion regarding the guilt of petitioner.

(2) That the juror had an opinion that petitioner was guilty.

(3) That the opinion was such that evidence would be required to overcome it.

(4) That if the juror's wife were on trial for an identical offense, he would not want her guilt or innocence determined by a jury in his frame of mind.

(5) That the reason for such answer is because he felt petitioner was guilty.

(6) That a defendant could not receive a fair and impartial trial in the juror's state of mind.

Appellant challenged Juror Porter for cause (R. 278). The challenge was disallowed (R. 283). Petitioner was thus compelled to exercise a peremptory challenge as to this juror (R. 430).

On direct examination on *voir dire*, among other things, prospective Juror Saavedra testified to the following (R. 284 to 296):

(1) After having heard all the evidence as well as the instructions of the Court; and having discussed the evidence in the light of the instructions; and having conscientiously entertained a reasonable doubt as to petitioner's guilt, the juror, nevertheless, would have a hesitancy in resolving a doubt in favor of the petitioner.

(2) That as a result of discussions with members of her family, and from what she read, the juror had formed an opinion that the petitioner was guilty.

(3) That the juror had expressed her opinion of guilt to members of her family.

(4) That it would require some evidence on the part of the defense to overcome the juror's opinion.

(5) That the juror did not know whether she could set her opinion completely aside.

(6) That the juror's opinion, to some extent, was apt to influence her verdict.

(7) That the juror felt that if she were being tried by a jury in her present frame of mind she could not receive a fair and impartial trial.

(8) That in the juror's present state of mind, she could not act fairly and impartially.

Petitioner challenged Juror Saavedra for cause (R. 292). The challenge was disallowed (R. 296), and petitioner was compelled to exercise a peremptory challenge (R. 414).

On direct examination on *voir dire*, among other things, prospective Juror Flynn testified to the following (R. 401 to 414):

(1) That from discussions with persons, and from what he read, he had formed an opinion that petitioner was guilty.

(2) That the juror had discussed the case with many people.

(3) That the juror did not know whether the persons with whom he had discussed the matter had personal knowledge of the facts.

(4) That the juror did not know whether any of such persons were likely to become witnesses in the case.

(5) That the juror had confidence and trust in the people with whom he discussed the case.

(6) That while the juror sat in the box he still had the opinion that petitioner was guilty.

(7) That the opinion of guilt was such that it would require evidence to overcome it.

(8) That if the juror's wife were on trial under similar circumstances, he would not trust the fate of his wife in the hands of a jury having his present state of mind.

(9) That a jury in the juror's present frame of mind could not render a fair and impartial verdict.

Petitioner challenged Juror Flynn for cause (R. 408). The challenge was disallowed (R. 412), and again petitioner was compelled to exercise a peremptory challenge (R. 462).

On direct examination on *voir dire*, among other things, prospective Juror Behrens testified to the following (R. 472 to 482):

(1) That the juror had discussed the case with many people who came into her place of business.

(2) As a result of discussions with these people, and as a result of what she had read, the juror had formed an opinion that petitioner was guilty.

(3) That she had expressed to other persons her opinion that petitioner was guilty.

(4) That as the juror sat in the box she still entertained that opinion.

(5) That it would require some evidence on the part of the petitioner to overcome that opinion.

(6) That as she sat in the jury box she believed that petitioner was guilty.

(7) That she did not know whether her verdict would be influenced by her opinion.

(8) That such opinion would prevent the juror from acting impartially.

(9) That if the juror were on trial for an identical offense she would not trust her fate to 12 persons in her present state of mind.

(10) That under such circumstances she would feel that she could not receive an absolutely fair and impartial verdict.

Petitioner challenged Juror Behrens for cause (R. 477). The challenge was disallowed (R. 479). This juror was likewise excused on a peremptory challenge (R. 500).

During the impanelment of the jury petitioner was compelled to exercise all of her 20 peremptory challenges allowed to her by Section 1070 of the California Penal Code (R. 347, 362, 370, 391, 401, 414, 430, 462, 482, 490, 500, 510, 521, 541, 569, 576, 598, 611, 619, 650).

After petitioner had exhausted 19 of her peremptory challenges, the trial court ruled that petitioner was entitled to one more challenge (R. 627).

After such ruling, Jurors Hall, Berch and Horrell entered the box.

Among other things, Juror Hall testified in *voir dire* that (R. 641 to 650):

(1) A dear friend, a sorority sister, had been murdered recently.

(2) Her sister is a policewoman in California.

(3) Her father was a policeman in California.

(4) She had read articles in newspapers which purported to report District Attorney Gustafson's statements concerning the case.

(5) From what she read and from discussions with 12 or 15 people she had formed an opinion that petitioner was guilty.

Among other things, Juror Berch testified in *voir dire* that (R. 629 to 640):

(1) As a result of what she had read or discussed, she had formed an opinion that petitioner was guilty.

(2) That as she sat in the box she still held that opinion.

Among other things, Juror Horrell testified in *voir dire* that (R. 655 to 672):

(1) His father had been a deputy sheriff of Ventura County.

(2) He had read newspaper articles relating to the testimony of the grand jury witnesses.

(3) He accepted as true, the newspaper articles.

(4) That because of these articles he believed petitioner to be guilty, and entertained that belief as he sat in the jury box.

Petitioner was required to use her last peremptory challenge to excuse Juror York (R. 650), leaving in the jury box, Jurors Hall, Berch and Horrell.

Summary of Argument

Prior to the commencement of the trial, the District Attorney had caused to be published, or allowed to be published, proposed proof of petitioner's alleged guilt, including alleged confessions of co-defendants as well as verbatim transcripts of the Grand Jury Proceedings; and made vitriolic and extensive arguments for the imposition of the death penalty. He participated in the general release of the above, intentionally and widely. Such acts amounted to misconduct, and constituted a deliberate attempt to prejudice the community against petitioner, and a deliberate attempt to frustrate petitioner in seeking a fair trial. Seeking to correct this wrong, petitioner duly moved for a change of venue. Her requests were denied. Due process requires that in this type of situation, the state provide a "corrective process".[2]

As a result of these circumstances, petitioner was deprived of her right to a fair trial, and hence, the judgment deprives her of life without due process of law, as guaranteed by the XIV Amendment to the Constitution of the United States.

Also, traditionally persons entering the jury box with a fixed opinion as to a defendant's guilt or innocence have been disqualified, *ipso facto*, to act as jurors. The State of California has a so-called "rehabilitation" statute which purports to permit opinionated jurors to become qualified under certain conditions. That statute was interpreted herein so as to permit to sit in judgment upon petitioner's

[2] Frank vs. Mangum, 237 US 309, 335.

life, jurors who had entered the box with a fixed opinion of petitioner's guilt and maintained that opinion during their examination on *voir dire*. By such interpretation petitioner was deprived of a trial by an impartial jury in violation of the XIV Amendment.[3]

Therefore, the judgment sentencing her to death ought to be reversed with instructions that the issues be tried in a County in California less susceptible to the District Attorney's prejudicial statements; and that a jury be selected in accordance with the 14th Amendment.

ARGUMENT

I

Introduction

> "Henceforth there shall be in every countie a sober, discrett and religious person appointed by the countie court, to be atturney to the Queen to prosecute and implead in the law all criminals and to doe all other things necessary or convenient as an atturney to suppress vice and immoralitie."[4]
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> —1704 Connecticut Law

This hearing concerns one of the most urgent and difficult problems in the administration of criminal justice; how to secure to the accused his right to a fair trial after

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[3] Thompson vs. Utah, 107 US 343.

[4] This is the first law in any of the American colonies establishing the office of public prosecutor, and is quoted in National Commission on Law Observance and Enforcement, Report on Prosecution, April 22, 1931, No. 4, page 7 (Wickersham Report). At common law, crimes were prosecuted privately by the aggrieved complainant. Lord Hale urged the replacement of private prosecutors by public prosecutors in order to do away with the evil practices of private criminal prosecution (*ibid.*) p. 6.

For a modern view as to the duties of the prosecutor, see *Re Sawyer*, 360 U.S. 620, 666.

the State has disseminated prejudicial statements to the public by means of the press and other mass media of communications, and ultimately how to prevent public prosecutors from trying their cases outside of the courtroom.

II

Published Statements of the District Attorney Constituted Deliberate Acts of the State, Calculated to Interfere With Orderly Procedure and Deprived the Petitioner of a Fair Trial.

The petitioner's right to a fair trial was invaded by the District Attorney's newspaper campaign. This Court has long recognized that due process may be denied where a trial takes place in a prejudiced atmosphere:

> "We, of course, agree that if a trial is in fact dominated by a mob, so that the jury is intimidated and the trial judge yields, and so that there is an actual interference with the course of justice, there is, in that court, a departure from due process of law in the proper sense of that term. And if the state, supplying no corrective process, carries into execution a judgment of death or imprisonment based upon a verdict thus produced by mob domination, the state deprives the accused of his life or liberty without due process of law" (*Frank* v. *Mangum*, 237 U.S. 309 at 335).

In *Moore* v. *Dempsey*, 261 U.S. 86, this Court in recognizing that an inflamed atmosphere might be incompatible with due process, after citing *Frank* with approval stated:

> "... But if the case is that the whole proceeding is a mask,—that counsel, jury, and judge were swept to the fatal end by an irresistible wave of public passion, and that the state courts failed to correct the wrong,—

neither perfection in the machinery for correction nor the possibility that the trial court and counsel saw no other way of avoiding an immediate outbreak of the mob can prevent this court from securing to the petitioners their constitutional rights" (at 91).

Petitioner does not claim that her trial was "mob dominated" in the sense of *Frank* and *Moore;* however, she does urge that the extrajudicial conduct of the District Attorney was an intentional interference with petitioner's right to a fair trial and that no "corrective process", such as change of venue, was provided. The principle of the cited cases is that extrajudicial factors tending to compromise the inviolability of the courtroom may defeat due process, and this principle is not weakened because it is the state, rather than the mob, which inspires the interference.

The practice of trying cases in the mass media is, in a sense, more appalling than certain improprieties committed by the police; see, e.g., *Rochin* v. *California,* 342 U.S. 165. This because the police, ostensibly, have a valid objective—the discovery of evidence. It is the method of the police, and not the objective which sometimes offends due process. No proper objective within the purview of a public prosecutor is remotely served by trying a case outside the courtroom. Moreover, the prosecutor is a skilled lawyer and is an officer of the court who, therefore, has knowledge and duties patently incompatible with such conduct. A reversal in this case would effectively communicate this point to the public prosecutors.[5] Petitioner is not suggesting that

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[5] In reversing a conviction in *People* v. *Wilkes,* 44 Cal.2d 679, the court stated:

"It was error for the prosecution to comment on the failure of Mrs. Wilkes to testify. (Citations.) Such error has repeatedly been denounced but held not to have been prejudicial in the circumstances of the particular cases in which it has occurred. Because of such repeated holdings it appears from the brief of the People, prosecuting officials have come

this court discipline prosecutors for misconduct by reversing judgments of conviction. Rather, he suggests such treatment for its therapeutic value in this instance and its preventive effects in future cases.

B.

This court has spoken of standards of conduct applicable to prosecutors: "It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring a just one." *Berger* v. *U.S.*, 295 U.S. 78, 88. These standards of conduct have become almost truistic.[6]

This court has dealt with inflammatory conduct on the part of newspapers and governmental officers. In *Shepherd* v. *Florida*, 341 U.S. 50, newspapers published as fact, and attributed the information to the sheriff, that the defendants had confessed. Justice Jackson, concurring, stated:

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to the belief that erroneous conduct in this regard is, as a matter of law, not cause for reversal. The conduct here, as in previous cases where it has been rebuked but held not prejudicial, was manifestly deliberate. *Regrettably, the circumstances make it apparent that we must recognize and deal with the fact that such conduct will not be discontinued as long as it is merely rebuked. . . .*" (Emphasis added.)

[6] "The prosecutor in a rural area should avoid appearing to be an overzealous crusader" (Frederick B. Bryant, "The Rural Prosecutor", in pamphlet, "Public Prosecutors", Practising Law Institute, 1955, p. 1). "Because of the key position which the prosecutor holds in controlling the atmosphere of a criminal trial, he should abstain from overemphasizing the sordid aspects of criminal news. . . . The prosecutor who scrupulously practices law instead of attempting to play politics will not be tempted to shape up his case for newspaper headlines and for justice afterwards. . . . Before and during the trial of a case, the prosecutor should avoid making premature disclosures which may have a bearing on the sentiment of the public or the reasoning of the jurors" (Wendell Berge, "The Prosecutor and Crime Publicity", 29 A.B.A.J. 63 (1943)).

> " . . . If the prosecutor in the courtroom had told the jury that the accused had confessed but did not offer to prove the confession, the court would undoubtedly have declared a mistrial and cited that attorney for contempt" (pp. 51-52).

Likewise, in the case at bar, if the prosecutor had made his statements before the jury and prior to the normal time for argument, the trial court would have taken similar action. The difficulty with this type of case is that trial courts have become accustomed to trial by newspaper and have become inured to such "procedure".[7] Although our trial courts function in the twentieth century, their cognition of this problem is obsolete. The lower courts must realize that old process is not necessarily due process, and just as ancient and crude methods of trial have had an historical refinement, so must the law extract and eliminate the impurity of trial by newspaper.[8] Again, Justice Jackson recognized the point in *Shepherd*:

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[7] Justice Frankfurter dissenting in *Stroble* v. *California*, 343 U.S. 181, observed:

> "And so I cannot agree to uphold a conviction which affirmatively treats newspaper participation instigated by the prosecutor as part of 'the traditional concept of the "American way of the conduct of a trial." ' Such passion as the newspapers stirred in this case can be explained (apart from mere commercial exploitation of revolting crime) only as want of confidence in the orderly course of justice. To allow such use of the press by the prosecution as the California court here left undisciplined, implies either that the ascertainment of guilt cannot be left to the established processes of law or impatience with those calmer aspects of the judicial process which may not satisfy the natural, primitive, popular revulsion against horrible crime but do vindicate the sober second thoughts of a community" (pp. 201, 202).

[8] Judge Walter W. Shaeffer recently wrote:

> "Due process cannot be confined to a particular set of existing procedures because due process speaks for the future as

> "... But prejudicial influences outside the courtroom, becoming all too typical of a highly publicized trial, were brought to bear on this jury with such force that the conclusion is inescapable that these defendants were prejudged as guilty and the trial was but a legal gesture to register a verdict already dictated by the press and the public opinion which it generated" (p. 51).

The prejudicial influence in petitioner's case was that the District Attorney carried on a brainwashing campaign to condition the local populace to his persuasion. It is difficult to imagine statements which could more effectively infect a trial. Petitioner could not have had a fair trial in Ventura County after the District Attorney had invoked the Madison Avenue technique in packaging the case.

C.

In *Stroble* v. *California*, 343 U. S. 181, this Court recognized that newspapers could so inflame and prejudice the atmosphere of a community as to deny due process. While *Stroble* affirmed the conviction under review, it is not dispositive of this case as is demonstrated by the comparison which follows.

In *Stroble*, the acts of the District Attorney were less aggravated. Consequently, this court merely deprecated his conduct in releasing to the press a confession which could have been printed four days later as a result of being

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well as the present, and at any given time includes those procedures that are fair and feasible in the light of the then existing values and capabilities. Some features of present procedures are now accepted by force of custom, or because no practical way has been found to improve them. Technological change or a refinement in our sense of justice may make their retention intolerable" (70 Harv. Law Rev. 1 at p. 6).

read into the record at the preliminary hearing (343 U. S. at 193). In this case the District Attorney carried out a deliberate press campaign to obtain the death penalty (see Appendices A and B of Baldonado).

Moreover, in *Stroble* this Court deemed it significant that the defendant did not seek a change of venue (343 U. S. at 194). In *United States* v. *Handy*, 351 U. S. 454, this Court again considered it significant that the defendant in a capital case who raised the issue of trial in a prejudiced atmosphere had not sought to change the venue of that trial. In this case motions for change of venue were seasonably filed. The basis for the motions was that a fair and impartial trial could not be obtained in Ventura County because of the prejudicial atmosphere engendered by the published statements of the District Attorney.

And in *Stroble* it was noted that public passion had had an opportunity to subside between confession and trial (343 U.S. at 192-193). Publicity concerning the Duncan murder reached its apogee only several days before the petitioner's trial which commenced on February 16, 1959.

The foregoing discussion highlights the two major distinctions between *Stroble* and this case. First, in petitioner's case the most harmful publicity resulted from the deliberate and intentional activities of the prosecution, while *Stroble* dealt primarily with newspaper accounts *per se*.[8a] The importance of this distinction is probably embedded in the difficult question of fair trial versus free press, because though *Stroble* was not a newspaper contempt case, a reversal might have served as an indirect re-

[8a] ". . . (W)e are . . . faced . . . with the question whether newspaper accounts aroused such prejudice in the community that petitioner's trial was 'fatally infected' . . ." (*Stroble*, at p. 191).

straining influence on the press. The thrust of the case at bar is directed primarily against the activities of the prosecutor as distinguished from the press.

The other important distinction is that petitioner vigorously sought a change of venue. In *Stroble* this court stated:

> " . . . But, in an effort to determine whether there was public hysteria or widespread community prejudice against petitioner at the time of his trial, we think it significant that two deputy public defenders who were vigorous in petitioner's defense throughout the trial, saw no occasion to seek a transfer of the action to another county on the ground that prejudicial newspaper accounts had made it impossible for petitioner to obtain a fair trial in the Superior Court of Los Angeles County" (p. 194).

D.

Due process should not saddle the defendant with the difficult burden of proving prejudice. The opinion below requires petitioner to demonstrate she was prejudiced by the state's wrongful conduct, that is, the conduct of the District Attorney. The petitioner is required to show that a juror was influenced by the prejudicial statements. Note, the demand for the showing comes from the wrongful actor. The state acts in a way calculated to deprive the defendant of a fair hearing, and then places upon her the burden of proving injury. Of course, this proof requirement is consistent with basic notions of remedies underlying our law, i.e., a person seeking legal redress usually must prove that he has been damaged. The problem with transporting such a notion to this area is the difficulty of proof. Anyone who has observed a *voir dire* proceeding is struck by the crude,

hit or miss, hunch method of getting rid of an unfavorable (i.e., "prejudiced") prospective juror. It is doubtful whether the use of professional psychometric personnel with their batteries of tests would provide any more certitude. Nevertheless, the state after engaging in acts presumably creating prejudice demands that the defendant, who is typically indigent, clearly demonstrates he has been prejudiced. Considering the difficulty of such proof the state has everything to gain, and little to lose, by selling its case in the mass media.

Accordingly, by this approach, the petitioner is required to produce a juror who has sufficient insight to recognize subconscious bias, or mistakenly believes he is biased, or dishonestly says he is biased, or dishonestly conceals his bias,—an intolerable burden with which to saddle the aggrieved persons. That even judges may have difficulty in recognizing their own bias has been noted:

> " . . . No judge fit to be one is likely to be influenced consciously except by what he sees and hears in court and by what is judicially appropriate for his deliberations. However, judges are also human, and we know better than did our forbears how powerful is the pull of the unconscious and how treacherous the rational process . . . " (concurring opinion in *Pennekamp* v. *Florida*, 328 U.S. 331, 357).

The harmful effect of trial by newspaper and other mass communication media has been the subject of scientific study, and there is little doubt that such communications can have a harmful effect on a trial.[9] Experiments show that

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[9] Murphy and Newcomb, *Experimental Social Psychology* (1937), pp. 961, 967 and 969; Cantrill and Allport, *Psychology of Radio*, pp. 177-180; Doob, *Public Opinion and Propaganda* (1945), p. 337. A comprehensive discussion of the entire problem of press and radio influence may be found in 63 Harv. L. Rev. 840. See, also, a recent note in 34 N.Y. Univ. L. Rev. 1278 (November 1959).

statements attributable to a public figure are more readily acceptable and have more impact than statements from obscure persons.[10] Obviously, this finding is applicable to a District Attorney in his own county. Petitioner has prepared as Appendix C a survey of material dealing with this subject.

E.

Although petitioner stresses the effect of newspaper publicity on his right to a fair trial, this case does not involve a collision of fair trial and free press principles. However, the cases involving freedom of press and fair trial are, nevertheless, instructive. See, e.g., *Craig* v. *Harney*, 331 U.S. 367. These cases recognize that newspaper activity can affect the administration of justice.[11] The majority in *Bridges* v. *Calif.*, 314 US 252, although finding that the administration of justice had not been compromised, stated:

> "The other evil feared, disorderly and unfair administration of justice, is more plausibly associated with restricting publications which touch upon pending litigation. The very word 'trial' connotes decisions on the evidence and arguments properly advanced in open court. Legal trials are not like elections, to be won through the use of the meeting-hall, the radio, and the newspaper."

The English experience is also instructive.[12] An English writer has formulated the problem in the following manner:

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[10] Murphy and Newcomb, *op. cit. supra*, note 8, at 970.

[11] Cf. United States v. Powell, USDC ND Cal., 171 F. Supp. 202.

[12] See appendix to State of Maryland v. Baltimore Radio Show, 338 U.S. 912.

"Perhaps no feature of modern journalism has been so severely criticized as the attempt to try cases in the press before they have been heard in the courts. In their desire to furnish their readers with the latest startling news, newspapers, unless properly controlled by the law, may publish incorrect statements of fact or express biased opinions which will hinder a fair trial. This is particularly true in those cases. . . . which are to be heard by a jury, for under modern conditions, every juryman reads a newspaper, and it is not unlikely that he will be influenced by what it says. The English courts have, therefore, taken a strong view in an attempt, which has proven remarkably successful, to put down the evil." [13]

Lord Ellenborough in an early case observed:

"If anything is more important than another in the administration of justice, it is that jurymen should come to the trial of those persons on whose guilt or innocence they are to decide, with minds pure and unprejudiced. Is it possible they should do so, after having read for weeks and months before *ex parte* statements of the evidence against the accused, which the latter had no opportunity to disprove or to controvert" (*Rex* v. *Fisher,* 11 RR. 799 (K.B. 1811)).

In the light of modern psychology, Lord Ellenborough's ideal juror, having a mind "pure and unprejudiced", may be an illusory objective. Yet, granting the jury system, should not the courts bend every effort toward seeking this lofty ideal?

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[13] Goodhart, Newspapers and Contempt of Court in English Law, 48 Harv. L. Rev. 885, at p. 885.

III

The Failure of the State to Supply a "Corrective Process" Constituted a Denial of Due Process.

After the District Attorney's statements, it was incumbent on the state to apply some "corrective process" (*Frank* v. *Mangum*, 237 U.S. 309). The accepted and available process was to change the venue of the trial. This Court in *Stroble* v. *California*, 343 U.S. 181, impliedly recognized that such procedure would be appropriate in cases of this nature.

Since *Stroble*, several cases have arisen in the courts dealing with community prejudice. These cases suggest some kind of relief should be given to ameliorate the prejudice: either change of venue or an appropriate postponement of trial. In *Delaney* v. *United States*, 199 F. 2d 107 (CA 1 1952), after indictment and before trial, a Senate Committee conducted hearings concerning conduct of the accused which received prominent attention in the press. The accused moved for a continuance of the trial to allow the prejudice to subside and his motion was denied. In reversing, a unanimous First Circuit, through Judge Magruder, stated:

> " . . . (T)he strongest point . . . relied upon by appellant, is that the trial judge committed error in not granting a continuance of the trial for a longer period, until such time as it could be estimated with greater assurance that the prejudicial effect of the aforesaid publicity . . . had so far worn off that the trial could proceed free of the enveloping hostile atmosphere and public preconception of guilt prevalent on January 3, 1952, when appellant was brought to trial" (p. 112).

The appellate court observed that the trial judge had conscientiously tried to minimize the prejudicial effect of the publicity by cautionary remarks and instructions, but discounts the prophylactic effect:

> " . . . But as stated by Mr. Justice Jackson, concurring, in *Krulewitch* v. *United States*, 1949, 336 U.S. 440, 453, 69 S. Ct. 716, 723, 93 L.Ed. 790: 'The naive assumption that prejudicial effects can be overcome by instructions to the jury, . . . all practicing lawyers know to be unmitigated fiction' . . . " (*ibid.*).

Here the petitioner's principal effort to mitigate the prejudicial atmosphere was to seek removal rather than continuance but the same fundamental question is involved.

In *Palakiko* v. *Harper*, 209 F. 2d 75 (CA 9), in affirming a conviction where defendant charged newspapers had created a prejudicial atmosphere, the court gave great weight to defendants' failure to ask for change of venue.

In *United States* v. *Rosenberg*, 200 F. 2d 666, 670 (CA 2), there was prejudicial newspaper publicity *during* the trial and defendants elected not to ask for a mistrial. Again, as in most of these cases, the court laid great stress on the fact that defendants failed to ask for some kind of relief from the prejudicial effect.

Recently a member of this court enunciated a view in accordance with the preceding analysis. See Douglas, *The Public Trial and the Free Press*, 46 A.B.A.J. 840, 841:

> "At other times the papers may so beat the drums of prejudice and passion as to make it doubtful whether a trial in the local courthouse can be fair to a particular defendant. See *Shepherd* v. *Florida*, 341 U.S. 50; *Stroble* v. *California*, 343 U.S. 181, 191-195.

Local feelings may run so high as to necessitate a change in venue or a continuance to allow emotions to subside.

"The point is that our remedy for excessive comment by the press is not the punishment of editors, but the granting of new trials, changes in venue, or continuances to parties who are prejudiced."

The impact of the activities of the District Attorney of Ventura County upon due process was manifest in the examination of a prospective juror in *voir dire*. The spontaneous expressions by that juror are more eloquent and graphic than a myriad of affidavits (R. 256, fol. 167, to R. 257, fol. 168):

"MR. GUSTAFSON: You say now that if Judge Blackstock tells you that Mrs. Duncan is presumed to be innocent until I present some evidence convincing you beyond a reasonable doubt that she is guilty, that if I produce no evidence whatsoever, so that there is no evidence to change your mind, that you will walk out in the jury room and find her guilty?

THE PROSPECTIVE JUROR: *Well, you already presented your evidence.*

MR. GUSTAFSON: Well, I am saying assume that I have no evidence whatever that I present to you, when I present the case—in other words, I fall down completely and I don't present any evidence against her—are you going to go and vote her guilty, despite the Judge's telling you that you must consider her innocent until the evidence is before you, proving her guilty beyond a reasonable doubt?

THE PROSPECTIVE JUROR: *Well, let's put it this way. I have heard a good deal of your evidence in the*

papers and television, and if you presented no evidence, you still have presented evidence that I know, and I can't forget." (Emphasis furnished.)

IV

Petitioner's Right to a Fair Trial as Guaranteed by the Due Process Clause of the XIV Amendment Was Denied by the Manner in Which Constituency of the Jury Was Established.

A. The Selection of the Jury.

Epitomizing the initial examination on *voir dire* of prospective juror Porter; as a result of discussions with 15 or 20 people, and from what he had read, he believed that petitioner was guilty; that the opinion was such that evidence would be required to overcome it; that if his wife were on trial for an identical offense, he would not trust her fate to people in his frame of mind; and that with his frame of mind, petitioner could not receive a fair trial (R. 277, 278).

Epitomizing the initial examination on *voir dire* of prospective juror Saavedra; after hearing all the evidence as well as the instructions of the Court, and even conscientiously entertaining a reasonable doubt as to petitioner's guilt, she would hesitate in resolving a doubt in favor of the petitioner; that from what she had read and from discussions with members of her family, she had formed an opinion that petitioner was guilty, and that she had expressed her opinion of guilt; that she did not know whether she could set her opinion completely aside, and that her opinion was apt to influence her verdict; that she could not act fairly and impartially; and that if she were being tried by a jury in her present state of mind, she could not receive a fair and impartial trial (R. 287-290).

Epitomizing the initial examination on *voir dire* of prospective juror Flynn; that from discussions with persons, and from what he had read, he had formed an opinion that petitioner was guilty; that he had discussed the case with many people and that he did not know whether these people had personal knowledge of the facts or whether they were likely to become witnesses; that furthermore, he had confidence and trust in these people; that as he sat in the box he still had the opinion that petitioner was guilty; that in his frame of mind he could not render a fair and impartial verdict; and that if his wife were on trial, he would not trust her fate in the hands of a jury having his state of mind (R. 406-408).

Epitomizing the initial examination of prospective Juror Behrens; that she had discussed the case with many people who had come into her place of business; that as a result of these discussions and as a result of what she had read, she had formed an opinion that the petitioner was guilty and had expressed such opinion to others; that as she sat in the box she still entertained that opinion; that she did not know whether her verdict would be influenced by her opinion, but that her opinion would prevent her from acting impartially; that if she were on trial, she would not trust her fate to 12 persons in her state of mind, and that she would not, under those circumstances, receive a fair and impartial verdict (R. 476, 477).

After these four prospective jurors had indicated unambiguously that they had entered the box with the opinion that the appellant was guilty and were unable to act impartially, the District Attorney, aided by the trial Court attempted to "rehabilitate" these jurors by securing "declarations" from them, that notwithstanding their opinions they would act impartially and fairly.

The technique used in securing such "declarations" included "questions" which not only suggested the answers, but also were framed in such manner, that by failing to give the answers suggested by the questions the prospective juror would put himself publicly in the light of being dishonest and unmoral. Frequently, the "question" propounded by the District Attorney or the trial Court would end with an expression such as "Wouldn't you?" or "Would you not?"; and with the combined pressure of the highest enforcement official of the rural county and the highest judicial officer in such county being exerted, the prospective juror replied on cue.

For instance, after prospective Juror Porter's definite delineation of bias, the District Attorney expostulated at great length (R. 278) on the applicable law, after which the following "examination" occurred (R. 279):

"MR. GUSTAFSON: Yes, in other words, you would have to decide what the facts are in the case, whether you believed such or, on the other hand, whether you believed something else, but in deciding what the verdict would be, based on the facts that you have decided, you would take the law as given to you by Judge Blackstock whether you agreed with it or not, would you not?

THE PROSPECTIVE JUROR: That's right.

* * * * *

MR. GUSTAFSON: You would act fairly about that then, wouldn't you?

THE PROSPECTIVE JUROR: Certainly would.

MR. GUSTAFSON: And you would act impartially about it?

THE PROSPECTIVE JUROR: I hope so.

* * * * *

MR. GUSTAFSON: You would be fair in that respect, would you not?

THE PROSPECTIVE JUROR: Yes, sir.

* * * * *

MR. GUSTAFSON: And that is the state of mind you have, isn't it?

THE PROSPECTIVE JUROR: Yes, sir."

After the District Attorney had terminated the phase of the "examination" above quoted, and the pressure having been removed, the prospective juror repeated his bias as follows (R. 282):

"MR. SULLIVAN:

Q. On your present frame of mind as to whether or not you would want to be tried by a jury of your present frame of mind.

A. No. I wouldn't want to in my present frame of mind.

Q. You wouldn't want your wife to be tried before a jury with your present frame of mind, would you?

A. No, sir.

Q. You wouldn't want to yourself be tried before a jury of your present frame of mind, would you?

A. No, sir."

After prospective Juror Behren's definite delineation of bias, the District Attorney continued the "examination" in the following vein (R. 478):

"* * * * *

Q. And in that respect you could be fair, could you not?

A. Yes, I could.

Q. And you would be fair?

A. Yes.

Q. And you could be and you would be impartial?
A. Yes."

After prospective Juror Saavedra's definite delineation of bias, the District Attorney conducted the following "examination" (R. 291-292):

* * * * * *

MR. GUSTAFSON: So you would then be fair?

THE PROSPECTIVE JUROR: Sure I would.

MR. GUSTAFSON: And you would be impartial, sitting as a juror in this case?

(The prospective juror nodded affirmatively.)

benefit of the presumption of innocence that she is entitled to, that Judge Blackstock tells you about, wouldn't you?

THE PROSPECTIVE JUROR: Yes.

MR. GUSTAFSON: So your frame of mind is that if you are selected as a juror, you would be fair and impartial?

THE PROSPECTIVE JUROR: Yes."

After the pressure was off, on further examination the prospective juror again delineated her bias (R. 292, fol. 228).

After prospective Juror Flynn's definite delineation of bias, and after the District Attorney had "examined" the prospective juror in the usual manner (R. 401-411) the trial Court continued the "examination" as follows (R. 411-412):

"THE COURT: Well, Mr. Flynn, you would be willing to follow all of the instructions of the Court wouldn't you?

THE PROSPECTIVE JUROR: Yes.

THE COURT: As far as the law is concerned?

THE PROSPECTIVE JUROR: Yes.

THE COURT: And if I tell you that the defendant is not required to prove anything, you would follow that instruction, wouldn't you?

THE PROSPECTIVE JUROR: Yes.

THE COURT: Did you mean to say that you would require the defendant to prove her innocence before you would find her not guilty? Did you mean to say anything like that?

THE PROSPECTIVE JUROR: No, not at all, not at all."

Challenges for cause to prospective Jurors Porter, Behrens, Saavedra and Flynn by petitioner were disallowed, and petitioner was required to utilize 4 of her challenges to remove them from the jury box.

After petitioner had exhausted 19 peremptory challenges, the trial Court ruled that petitioner was entitled to one more (R. 627).

At the time of such ruling, prospective Juror York had already been seated in the box. After the ruling Jurors Hall, Berch and Horrell entered the box.

Prospective Juror York had already testified on *voir dire* that he had formed an opinion that petitioner was guilty (R. 173, fol. 34).

Among other things, Juror Hall testified in *voir dire* that (R. 641 to 650):

(1) A dear friend, a sorority sister, had been murdered recently.

(2) Her sister is a policewoman in California.

(3) Her father was a policeman in California.

(4) She had read articles in newspapers which purported to report District Attorney Gustafson's statements concerning the case.

(5) From what she read and from discussions with 12 or 15 people she had formed an opinion that petitioner was guilty.

Among other things, Juror Berch testified in *voir dire* that (R. 629 to 640):

(1) As a result of what she had read or discussed with 8 or 10 people she had formed an opinion that petitioner was guilty.

(2) That as she sat in the box she still held that opinion.

Among other things Juror Horrell testified in *voir dire* that (R. 655 to 672):

(1) His father had been a deputy sheriff of Ventura County.

(2) He had read newspaper articles relating to the testimony of the grand jury witnesses.

(3) He accepted as true, the newspaper articles.

(4) That because of these articles he believed petitioner to be guilty, and that he entertained that belief as he sat in the jury box.

Similarly, on continued "examination" of these additional jurors, the District Attorney suggested answers, and with some prodding by the trial Court, the jurors purported to rehabilitate themselves.

With respect to Juror Berch, the following occurred (R. 631):

"Q. If you are accepted as a juror in this case, would you require the prosecution to prove to your satisfac-

tion, to a moral certainty and beyond a reasonable doubt the guilt of Mrs. Duncan?

A. No, sir.

Q. You would not require them to do that?

A. The District Attorney has to prove . . .

THE COURT: She didn't understand.

(By Mr. Gustafson)

Q. Now with respect to my proving Mrs. Duncan guilty, you aren't going to require me to do more than the law requires, are you: that is, you are not going to require me to prove her guilty beyond any doubt whatever but only a reasonable doubt?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

* * * * *"

With respect to Juror Hall, the following occurred (R. 672):

"(By Mr. Gustafson):

Q. You will decide it wholly on the basis of the evidence presented in court and by the instructions given to you by Judge Blackstock?

A. Yes, sir.

Q. And you will apply those instructions of law whether you think they are wise or unwise?

A. That is right.

Q. Good or bad? Right?

A. Yes, sir."

Prospective Juror York was excused by petitioner's last challenge (R. 650).

By way of epitome, upon examination of Jurors Porter, Behrens, Saavedra and Flynn, it appeared that they had

entered the jury box with fixed opinions as to petitioner's guilt and maintained that opinion while they were in the box, but nevertheless, the petitioner was required to utilize 4 peremptory challenges to excuse them; that thereafter, Jurors Hall, Berch and Horrell entered the box, and with Juror York comprised a group of four jurors who had entered the box with fixed opinions as to petitioner's guilt and maintained that opinion while they were seated; that at such time petitioner had only one peremptory challenge left which she utilized in excusing Juror York, leaving seated in the box, three jurors (Hall, Berch and Horrell) who had entered the box with fixed opinions and maintained them, and with whom she was powerless to deal.

B. California's "Rehabilitation" Statute.

The relevant part of Section 1076 of the California Penal Code reads as follows:

> "... but no person shall be disqualified as a juror by reason of having formed or expressed an opinion upon the matter or cause to be submitted to such juror, founded upon public rumor, statements in public journals, circulars, or other literature or common notoriety; provided, it appear to the court, upon his declaration, under oath or otherwise, that he can and will, notwithstanding such an opinion, act impartially and fairly upon the matters to be submitted to him . . . "

For reasons impelled by basic fairness, at common law a juror was *ipso facto* disqualified if he entered the box with an opinion as to the defendant's guilt or innocence; and subsequent statements by the juror on *voir dire*, purporting to "rehabilitate" him were inhibited.[14]

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[14] People vs. Miller, 125 Cal. 44; People vs. Landis, 139 Cal. 426. For a comprehensive analysis of typical English and American cases, see People vs. Vermilyea, 7 Cowen 108 (N.Y.), page 121.

For reasons of expediency, there has been a "departure" from the common law rule. "Rehabilitation" of a juror is permitted where actually his "opinion" is nothing more than an "impression" obtained from general circulating reading material or common rumor. This "departure" is expedient. With the expansion of newspaper enterprise, intelligent people generally read and thus gain "impressions".[15]

However, the "departure" from the common law rule must be minimal because of Constitutional considerations.

In consonance with the above, the California cases have established the following principles:

When it is manifest that a juror has entered the box with an opinion as to the guilt or innocence of the defendant, the trial court has no jurisdiction to elicit from the juror, a declaration to the effect that notwithstanding such juror's opinion, he can and will impartially and fairly, act upon the matters submitted to him unless:

1. The biased opinion has been founded upon:
   (a) Public rumor, or
   (b) statements in public journals, or
   (c) statements in circulars, or
   (d) statements in other literature, or
   (e) common notoriety, or
   (f) a combination of any of the above.

2. The biased opinion has been founded *solely* and *exclusively* on one of the above, and

[15] Reynolds vs. United States, 98 U.S. 145.

3. The record affirmatively shows that fact clearly.

4. The burden of creating the record is upon the one seeking to elicit the declaration under Section 1076. (In this case, the District Attorney.)

Section 1076 is in derogation of the common law rule, and cannot be extended beyond the case stated therein, to wit, the "opinion" must be founded on *public rumor, statements in public journals,* or *common notoriety.*[16]

Where it is not clear whether the "opinion" was engendered in discussions with specific persons, or in general circulating material or common rumor, the California Courts have ruled against a purported "rehabilitation" of the juror.

In *People* v. *Wells,* 100 Cal. 277, upon entering the box a juror stated that he had formed an opinion as to the guilt of the defendant. The trial court permitted the juror to make a declaration through the usual prosecution questions tending to show the juror's willingness and ability to act impartially despite his opinion. Upon such declaration the trial court found the juror to be qualified. In reversing a conviction because of this finding, the Appellate Court at page 231 stated as follows:

> "The juror would not only be disqualified at common law, but disqualified under the Penal Code, for he has not brought himself within the provisions of Section 1076, as those provisions require an *affirmative showing* to the court that his opinion is based upon public rumor, common notoriety, or statements from public journals." (Emphasis furnished.)

In *People* v. *Miller, supra,* a juror stated that *he had read newspaper accounts* of the homicide constituting the

[16] People vs. Landis, supra.

subject matter of the prosecution, *heard the matters discussed by persons, but did not know whether such persons assumed to know the facts or not, that from what he had heard or read* he formed an opinion unfavorable to the defendant; and that it would take a little evidence to remove that opinion.

Thereupon, the juror declared that if sworn he would try to lay aside his opinion entirely and act solely upon the evidence, etc., and that he would take the instructions of the court as to the law. Upon this declaration the trial court found the juror qualified. The Appellate Court reversed the conviction and after delineating the common law disqualification, and the effect of §1076, stated at pages 46-47 as follows:

> "The court is not allowed to hold a juror is qualified when he is impressed with an opinion as to the guilt or innocence of a defendant, unless that opinion is based *alone* upon one or more of the cases enumerated in the aforesaid section . . .
>
> *"As far as the record discloses, any one of the parties with whom the juror conversed as to the circumstances . . . may have been an eye-witness . . . The record must show affirmatively a contrary state of this,* or the exception in section 1076 to the common law rule cannot be invoked." (Emphasis furnished.)

The Court then stated:

> "There is nothing in the evidence which would justify the conclusion that the opinion of the juror was founded *alone* upon public rumors, statements in public journals, or common notoriety." (Emphasis furnished.)

In *People* v. *Riggin*, 159 Cal. 113, the Court at pages 117-118 stated as follows:

> "But the inquiry as to the ability of the juror to lay aside an opinion which he has, amounting to actual bias, and to act impartially and fairly in the matter, is pertinent and material, under Section 1076—*only* where . . . an opinion . . . is based *solely* upon public rumor, common notoriety or statements in public journals. . . . It must be founded *exclusively* upon one or more of the sources of information above stated." (Emphasis furnished.)

In *People* v. *Sullivan*, 59 Cal. App. 633, the opinion of the challenged jurors were based *in part* upon what persons had said. The Court held that a declaration under §1076 was not in order because the opinions were not based solely upon public rumor, etc.

See also *People* v. *Harrison*, 13 Cal. App. 555.

Nearly all of the disputed jurors herein obtained their information *partly* from specific persons and *partly* from reading material. Some of the disputed jurors spoke to a great number of people in whom they had great reliance and trust. They did not know whether such a great number of people had personal knowledge of the facts, or might even be witnesses.[17]

In its opinion the Court below stated as follows (R. 148, fol. 113):

> "There is nothing in the record to suggest that anyone with whom they talked had personal knowledge regarding the case, and their statements indicated they

[17] Ventura is a relatively small rural county.

did not understand that these people had such knowledge. . . . "

In this statement lies the error of the court below.

In the first place, under California law, the burden was upon the District Attorney (who was seeking to "rehabilitate" the jurors under Section 1076) *to make a showing that the persons* from whom the jurors obtained their information that partly constituted the basis for their prejudiced opinion, had no personal knowledge of the facts; and thus the Court below improperly placed the burden upon petitioner to clarify the record.

Secondly, accuracy requires some interpolation of the statement of the Court below. With such interpolation, the statement would be as follows:

"There is nothing in the record to suggest, that anyone with whom they talked, *did or did not have* personal knowledge regarding the case; and their statements indicated they did not know *whether or not* these people had such knowledge."

With this accurate characterization of the record, the court below would be without rationalization to make the following statement (R. 145, fol. 128):

". . . We have concluded that the court did not abuse its discretion in removing the four prospective jurors for actual bias . . . "

C. The Violation of Federal Due Process.

However, whether or not the state action was within the framework of the California Statutes or procedure is not determinative of petitioner's rights under the XIV Amendment.

In *Chicago B. & Q. R. Co.* v. *Chicago*, 166 U.S. 234, this Court stated:

> "... But a state may not, by any of its agencies, disregard the prohibitions of the 14th Amendment. Its judicial authorities may keep within the letter of the statute prescribing forms of procedure in the courts and give the parties interested the fullest opportunity to be heard, and yet it might be that its final action would be inconsistent with the Amendment. In determining what is due process of law regard must be had to substance, not to form ..."

With respect to the question of the denial of due process by the imposition upon petitioner of a biased and prejudicial jury, no intense legal polemics are required. Defendants being tried by a jury are entitled to an impartial jury. This right stems from the Magna Carta.[18] It is a right to which States must yield in legislating even on procedural matters.[19]

This court has had before it for consideration, cases of other states involving the "rehabilitation" of jurors under Statutes similar to Section 1076 of the California Penal Code; and in each of such cases where this court has upheld the "rehabilitation" of a juror there was a significant delineation of facts:

(a) indicating clearly, specifically and affirmatively that the juror had based his "opinion" upon general circulating reading material, or something equivalent.

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[18] Thompson vs. Utah, 107 U.S. 343; Ex parte Bain, 121 U.S. 1.

[19] In Hayes vs. Missouri, 120 U.S. 68, the Court stated as follows:

"In this country the power of the Legislature of a State to prescribe the number of peremptory challenges is limited only by the necessity of having an impartial jury ..."

(b) indicating that the juror had not expressed an opinion of guilt outside the jury box.

(c) indicating that what the juror thought was an "opinion" was merely an "impression."

Thus, this Court has made minimal, the "departure" from the traditional rule that a juror, once having expressed an opinion of guilt, or having entered the jury box with an opinion as to defendant's guilt or innocence is *ipso facto* disqualified.

In *Ex parte Spies*, 123 U.S. 131, in contemplation of an Illinois Statute, Hurd, R.S. Ill. 1885, page 752, Chap. 78, Sec. 14 (similar to Section 1076 of the California Penal Code) this Court, among other things, pointed out that the two jurors under consideration had formed their opinions of guilt *exclusively* from what they read in the newspapers and not from discussions with other people; *and that the jurors had not expressed an opinion to others.*

In *Thiede* v. *Utah*, 159 U.S. 510, in contemplation of Sec. 5024, Compiled Laws of Utah (very similar to Sec. 1076 of the Penal Code of California) this Court stated:

> "... These jurors testified substantially that at the time of the homicide they had read accounts thereof in the newspaper, and that some impression had been formed in their minds from such reading, but each stated that he could lay aside any such impression and could try the case fairly and impartially upon the evidence presented ..."

In *Hopt* v. *People of Utah*, 120 U.S. 430, this Court stated:

> "... On his examination it appeared that the juryman ... had taken the newspaper statements for facts;

that he had no opinion other than that derived from the papers, and that evidence would change it very easily . . . "

On an appeal from a conviction in a federal court, in *Holt* v. *United States,* 218 U.S. 245, this Court stated:

". . . in his examination it appeared that the juryman had not talked with anyone who purported to know about the case of his own knowledge, but that he had taken the newspaper statements for facts; that he had no opinion other than that derived from the papers; and that evidence would change it very easily . . . "

D. THIS COURT SHOULD NOT SUSTAIN THE METHOD OF "REHABILITATION" HEREIN.

In *United States* v. *Chapman,* 158 Fed. (2) 417, culling from various opinions of this court, the United States Court of Appeals for the Tenth Circuit stated:

"... Impartiality in the sense that we use it is not a technical conception. It is a state of mind or mental attitude, for the determination of which there is no fixed formula. *United States* v. *Wood,* supra (299 U.S. 123). Whether a juror is prejudiced or partial in the sense that one of the parties is denied a fair and impartial trial, is not a procedural matter to be determined by statutory construction. *It is one of substantive law under the Constitution, to be resolved according to the highest standards of human conduct.* It is a question first addressed to the good sense of the trial judge, *subject to review under the supervisory power inherent in appellate jurisdiction.* Cf. *McNabb* v. *United States,* 318 U.S. 332 . . . , *Thiel* v. *Southern Pacific Co.,* 66 S. Ct. 984 . . . "

"... A juror's answer to questions touching his state of mind is primary evidence of his competency but the ultimate question is a judicial one for the court to decide, and in case of doubt, justice demands that the challenge be allowed . . . *Crawford* v. *United States*, 212 U.S. 183 . . . *Only by a punctilious regard for a suspicion of prejudice can we hope to maintain the high traditions of our jury system.* . . . " (Emphasis added.)

In *People* v. *Brotherton*, 43 Cal. 531 at 533, in discussing actual bias of a juror the Court stated as follows:

"... Experience . . . shows that . . . even the most intelligent class of jurors . . . when questioned by the Court or counsel they often readily adopt the views suggested at the moment by either, rendering it difficult, if not impossible, for the trial Court to determine whether the challenge should be allowed or overruled."

Then, after discussing the metaphysical aspect, the Court stated further:

"... Under such circumstances, and when after proper investigation had, doubts, more or less grave in their character, as to the actual state of mind of the juror still remain, it is better that the challenge, if insisted upon, be allowed, for by that course injustice can rarely be done the prisoner; . . . "

And in *Quill* v. *Southern Pacific Co.*, 140 Cal. 268 at 271, the Court stated as follows:

"... Even in many of those cases, notwithstanding the positive declaration of the juror and provision of the Penal Code (Pen. Code, sec. 1076), this court has felt compelled to reverse the ruling of the trial judge,

> because upon a consideration of the whole testimony, it has seemed manifest that the juror could not do that which he so positively declared his ability to do . . . "

Considering the positive attitude manifested by the jurors on initial examination, the manner of adducing the "declaration" by the District Attorney, and the vacillations, it cannot be properly said that there were no grave doubts as to the actual state of mind of these jurors; and that upon a consideration of the whole testimony, it is manifest that these jurors could not do that which they declared they could do in response to leading questions.

In *People* v. *Helm*, 152 Cal. 532, the Court approved the following excerpt from *People* v. *Holt*, 13 Mich. 224:

> "... wherein, after full examination of the testimony given upon the challenge leaves a reasonable doubt of the impartiality of the jury the defendant should be given the benefit of that doubt."

The approval of the utilization of a jury of the type herein described in a capital case would be an anomaly in Anglo-Saxon jurisprudence.

Conclusion

Appellant respectfully submits that she was denied due process under the XIV Amendment to the Constitution of the United States in that she was denied a fair trial, resulting from the failure of the Courts of the State of California to grant her motion for a change of venue; and from the imposition upon her of a biased and prejudiced jury.

Appellant respectfully urges that for the reasons set forth herein this cause should be reversed by this Honorable Court.

Respectfully submitted,

A. L. Wirin
Arthur Warner
S. Ward Sullivan
Frank Duncan
Leonard Nasatir

APPENDIX C

(1)

Howland and Weiss, "The Influence of Source Credibility on Communication Effectiveness", in *Public Opinion and Propaganda* (The Dryden Press, 1954)

"An important but little studied factor in the effectiveness of communication is the attitude of the audience toward this communication. Indirect data on this problem came from studies of 'prestige' in which subjects are asked to indicate their agreement or disagreement with statements which are attributed to different individuals. The extent of agreement is usually higher when the statements are attributed to 'high prestige' sources."

(2)

Charles W. Smith, Jr., *Public Opinion in a Democracy* (Prentice-Hall, Inc., 1939)

"Public opinion, then, is not the sum total of the individual opinions of isolated men. It is made up of the opinions of men living an associational life and affected by their contact with one another. Common interest, common elements of environment and inheritance, similar sources of information, and discussion among individuals give it unity of force" (p. 17).

(3)

Weld, A Study of the Way in Which a Verdict Is Reached by a Jury, 53 American Journal of Psychology 518 (1940)

"We also found as Weld and Roff found (in 51 American Journal of Psychology 609 (1958)) that early in the (moot court civil) trial many jurors reached a fairly definite decision, and that thereafter the effect of the testimony was merely to change their certainty. This happened with at least 25% of the jurors, half of whom were disposed in the

one, and half in the other way. Even those who as the trial progressed developed an attitude of doubt were still inclined to favor the one side or the other and in the jury room did so. We found no juror who attempted to maintain an attitude of doubt on the theory that he should make no decision until he had heard all the evidence, but we can substantiate the earlier findings of the cautious juror, and of the juror who is easily swayed by the testimony. In addition we discovered jurors who were influenced in reaching their verdict less by the proof than by their notion of what under the circumstances seemed to them to be 'right' or just" (p. 535).

(4)

Levine and Murphy, "The Learning and Forgetting of Controversial Material", 38 Journal of Abnormal & Social Psychology 507 (1943)

"An individual notes and remembers material which supports his social attitudes better than material which conflicts with these attitudes" (p. 515).

(5)

LeViness, Crime News, 66 U.S.L. Rev. 370 (1932) quotes H. L. Mencken

"Journalistic codes of ethics are all moonshine."

(6)

David Ensor, *I Was a Public Prosecutor*, Robert Hale Ltd. (1958)

"There is one other problem which has caused me some considerable concern for many years and that is prejudice against an accused person as a result of press publicity arising from the committal proceedings. It is a problem which is as old as the hills but has been brought to the attention of the Public by the remarks of Mr. Justice Devlin in a recent case at the Old Bailey. There have been a number of sensational cases in the last thirty years to my knowledge when, because of publicity, it was very difficult

to ensure that the accused received a fair trial. In cases where some juicy evidence is given before the Magistrates and plastered all over the daily Press and then later excluded at the trial because it is inadmissible, the danger is very real. The worst case of this on record is, I believe, the "Blazing Car" case and the trial of Arthur Rouse. There before the committing Justices exciting evidence was given of the accused's relations with numerous young women, his harem, as he so aptly called it, and lurid details were given of his various illegitimate children. All given in evidence because the prosecution believed it necessary to prove a motive for Rouse's disappearance and his subsequent actions. It may or may not have been necessary but it was certainly food for the newspapers and the gaping public and, incidentally, the jury yet to be chosen. Then at the trial it is not used, no doubt because that great and eminently fair prosecutor, then Mr. Norman Birkett, regarded it as unfair. By that time, of course, the damage was done and it is difficult to imagine just how a trial could be properly conducted under such conditions. In the case of Rouse I do not for a moment believe that there was or could be any question of his guilt, but that is beside the point. Any prejudice to an accused person must be avoided at all costs. It is very true to say that not only should justice be done but that it should manifestly appear to be done" (pp. 169-170).

(7)

"The Newspaper and Crime", address by Stanley Walker, City Editor, New York Herald-Tribune, printed in Attorney General's Conference on Crime, Dec. 10-13, 1934, Washington, D. C.

"In general, however, I am all in favor of the merciless, complete printing of all the news of crime. In no other way can the public be shaken out of its natural lethargy" (p. 6).

"I believe it is better for the public to be fully informed, whether the facts are pleasant or shocking, than to remain ignorant" (p. 7).

(8)

"Why Print Crime News", address by Paul Bellamy, Editor, Cleveland Plain Dealer, printed in Attorney General's Conference on Crime, December 10-13, 1934, Washington, D. C.

"Again, the newspaper which is honestly endeavoring to clean up crime in its community will meet with the criticism that it is whipping up a public hysteria which makes it impossible for defense lawyers to obtain jurors of an open mind, inasmuch as jurors, after all, are a part of the community. Anyone with considerable experience in the newspaper business can probably remember cases when something like this happened, and it should not happen. On the other hand, I am forced to observe in this connection, as I did in the matter of the moronic youths who imitate criminals, that if it is so, I do not see much that can be done about it. There should certainly be no deliberate attempt to build up unfair psychology toward any given criminal, but I would defend as long as I had any breath, the obligation of a newspaper to build up the strongest possible psychology that it can against crime. Lawyers, alas, do not always conduct the defense of criminals in such a way as to convince the unprejudiced observer that their principal object is the attainment of justice. If a layman dare make an observation with regard to the case I should like to suggest that the method of jury selection permitted, if not made obligatory, under the laws of most of our states, is a travesty and a joke. Repeatedly I have seen lawyers proceed toward the selection of a jury with no other purpose in mind, so far as an outsider can determine, except to get just as dumb a jury as possible and a jury which can have the wool pulled over its eyes as easily as possible by rhetoric and passionate declamation. It has always seemed to me a particularly foolish thing to allow lawyers to eliminate from juries all persons who will admit that they have read any newspaper record concerning an important or sensational crime. At risk of being accused of making a sales talk for newspapers, I should like simply to observe that most people in this day and generation do read newspapers, and those who do not read newspapers

are for the most part more nearly analogous to the vegetable than to the animal kingdom. They are people who do not know what is going on, who have no opinion, no imagination, very little education, and for the most part are utterly incapable of analyzing any proposition requiring thought" (pp. 14-15).

(9)

Wendell Berge, "The Prosecutor and Crime Publicity", 29 A.B.A.J. 63 (1943)

"The prosecutor is not merely an advocate—he appears in Court 'clothed in official raiment'" (p. 64).

(10)

Statement of Judge of the Criminal Court of Baltimore City, quoted in *Maryland* v. *Baltimore Radio Show*, 338 U.S. 912

". . . (B)ut Judges are supposed to be made of sterner stuff than to be influenced by irresponsible statements regarding pending cases. They are trained to put aside inadmissible evidence and while we, of course, recognize our limitations, I think that most Judges, at least, are fairly able to disregard improper influences which may have reached their attention.

"Now, what about the jury? In the first place, what is this jury that we are talking about? They are twelve men, or in most jurisdictions now, as in Maryland, men and women who are picked from all walks of life and who have the responsibility of hearing cases and determining, in this State at least, not only the facts but the law in the case. It may be unfortunate, perhaps, but certainly the fact is that the jury's verdict is final in most cases. There is the limited protection of the accused to apply for a new trial, but the Court of Appeals can not determine—review and determine—the propriety of the verdict reached by the jury either on the law or on the facts. Now this jury system is intended, and I think it works out that way, to bring to the trial of a case as one element, the public opinion in the community. It is true that the jury is sworn to decide the case upon the evidence which it hears from the witness

stand, but I think that no experienced lawyer would contend that a jury is not expected to bring to the consideration of its verdict the temperament of the community in which the members of the jury live. The jury is called upon to decide the facts as it hears them from the witness stand in the light of its past experience and, if you please, its past knowledge. True, attempts are made to get jurors who have not been touched with any previous influence in the case, but the safeguards that are provided for the realization of that ideal are all too limited" (pp. 913-914).

"Now, the Court can not help but feel that the broadcast referred to in these cases must have had an indelible effect upon the public mind and that that effect was one that was bound to follow the members of the panel into the jury room . . . " (p. 915).

"The suggestion was made here also, that the mischief could have been avoided by exercising the right of the Defense to examine, on their voir dire, all prospective jurors and then inquiring as to whether or not they had heard these broadcasts. Well, now, it hardly seems necessary for the Court to say to men who are experienced in the trial of jury cases, that every time Defense Counsel asked a prospective juror whether they had heard a radio broadcast to the effect that his client has confessed to this crime or that he has been guilty of similar crimes, he would by that act be driving just one more nail into James' coffin. We think, therefore, that remedy was useless" (p. 916).

(11)

Canon of Professional Ethics No. 20, American Bar Association

NEWSPAPER DISCUSSION OF PENDING LITIGATION

Newspaper publications by a lawyer as to pending or anticipated litigation may interfere with a fair trial in the Courts and otherwise prejudice the due administration of Justice. Generally they are to be condemned. If the extreme circumstances of a particular case justify a statement to the public, it is unprofessional to make it anonymously. An *ex parte* reference to the facts should not go beyond quotation from the records and papers on file

in the court; but even in extreme cases it is better to avoid any *ex parte* statement.

(12)

People v. *Ford*, 25 Cal. App. 388

". . . Ordinarily where there is an existing highly inflamed condition of the public mind prejudicial to a person charged with crime, it finds some manifestation through the public press, or by assemblages of the people in the neighborhood of the scene of the crime, and, if general, in other parts of the county. . . . "

(13)

Bernard Botein, *The Prosecutor* (Pocket Books, Inc., Publishers, 1957)

"This is my recurring premise, conjugated in case histories—that a ruthless, resourceful prosecutor, indifferent to the rights of defendants, can with little risk win headlines or fame. Such a small group of lawless law-enforcement officers, dangerous out of all proportion to their number, can evolve only because most of us are entirely unaware of the anatomy of a prosecuting agency. We form strange, romantic notions of a district attorney's job, shaped by fictional and Sunday supplement stories.

"When reading unabashed fiction we exult in the skill with which Perry Mason or Ephraim Tutt put the overweening and ruthless prosecutor to rout. Through many pages, before we reach the courtroom finale, the author has taken pains to win our sympathy for the morally, if not legally, innocent defendant; and to excite our detestation for the loathsome district attorney, who would offer the defendant as a human sacrifice on the altar of his ambition and vanity. We find ourselves ranged on the side of virtue, which is a good enough fictional equivalent for law and order.

"But in real life this same concern for law and order sometimes causes us unwittingly to admire and vote for the very type of prosecutor we loathe in fiction—provided he puts on a resounding show in lashing the hapless sus-

pect. Everybody is for curbing crime, and as vigorously as possible. Unfortunately, the public has no means of distinguishing official vigor from official excesses. It is safer politically for a prosecutor to ride roughshod over the rights of an accused, provided he does so with energy and fanfare, than to proceed cautiously with scrupulous regard for those rights. The latter course might be misconstrued as coddling criminals or official laxity. As the late Justice Jackson wrote, 'District attorneys who have been rebuked by the courts are frequently promoted by the public.'

"In real life there is no helpful author to convince us of the innocence of the defendant. The mere accusation by vested authority so debases the accused in the public mind as to muffle his protestations of innocence; and also taints anyone who questions the prosecutor's methods. Prosecution becomes largely an *ex parte* business. The major vice of some few prosecutors—abuse of human rights and privileges—becomes a major virtue in the eyes of the public.

"I do not recall any prosecutor ever coming a cropper because of the harshness of the methods he employed—provided he did not invite scrutiny by some collateral political blunder. This holds true as well in related fields of public service. If a United States senator advocates high taxes he will be criticized by colleagues, newspapers and persons opposed to such a program. However, let him investigate fraud in the processing of those tax returns, and he can do no wrong.

"The remedy, as I see it, is not to strip prosecutors of any of their powers. As balanced by a proper regard for the protection afforded the individual by the Bill of Rights and related legislation, a prosecutor needs these powers to do an effective job. But I believe abuse of these necessary powers can be discouraged through a critical public made aware of prosecuting methods. And I also believe that a tendency by the decent members of a prosecuting staff to shrug off the improper conduct of a few associates as a matter of their personal privilege will diminish as they are jolted into realization of the consequences" (pp. 243-245).

(14)

Statement of John Lord O'Brian Concerning Prosecutions Under the Espionage Act of 1917, Quoted in Zechariah Chafee, Jr., *Free Speech in the United States* (Harvard University Press, Publishers, 1948)

"It has been quite unnecessary to urge upon the United States Attorneys the importance of prosecuting vigorously, and there has been little difficulty in securing convictions from juries. On the contrary, it has been necessary at all times to exercise caution in order to secure to defendants accused of disloyalty the safeguard of fair and impartial trials. In addition to the causes already recited there were the patriotic agitations continually being carried on by the Liberty Loan speakers, four-minute men and others, all of which worked the whole country up to a pitch of intense patriotism, resulting in instinctive aversion toward anyone even under suspicion for disloyalty" (p. 67).

Also Chafee:

"For the human machinery broke down at a second point—the jury. It is sometimes suggested that a jury trial gives a sufficient protection for freedom of speech, and that public sentiment will inevitably reflect itself in verdicts of acquittal if the prosecution seems unjust. It is undoubtedly true that in England freedom of discussion is, as Dicey says, 'little else than the right to write or say anything which a jury, consisting of twelve shopkeepers, think it expedient should be said or written.' In my first chapter, however, I have endeavored to show that this protection is entirely inadequate and that the constitutional provision must mean much more. It is only in times of popular panic and indignation that freedom of speech becomes important as an institution, and it is precisely in those times that the protection of the jury proves illusory. As the Assistant to the Attorney General admits, 'There has been little difficulty in securing convictions from juries'" (p. 70).

(15)

Joseph Ratner (Ed.), *The Philosophy of Spinoza* (The Modern Library, Publishers, 1927)

"If we imagine men to love or hate a thing, we shall therefore love or hate it; that is to say, we shall therefore rejoice or be sad at the presence of the thing, and therefore we shall endeavor to do everything which we imagine men will look upon with joy, and, on the contrary, we shall be averse to doing anything to which we imagine men are averse.

"He who imagines that he affects others with joy or sorrow will necessarily be affected with joy or sorrow. But since man is conscious of himself by means of the emotions by which he is determined to act; therefore if a person has done anything which he imagines will affect others with joy, he also will be affected with joy, accompanied with an idea of himself as its cause; that is to say, he will look upon himself with joy. If, on the other hand, he has done anything which he imagines will affect others with sorrow, he will look upon himself with sorrow" (pp. 241-242).

(16)

R. M. MacIver, *The Web of Government* (The Macmillan Company, Publishers, 1948)

" . . . All institutions, whether dignified by ceremony or not, tend to implant in men a sense of the authority that maintains them. Since the state is the guardian and maintainer, at least in a formal sense, of all social institutions the might of its authority is omnipresent. Whatever men do, whatever they strive for, predicates under normal conditions the existing frame of institutions. Our dependence on institutions becomes identified with our dependence on authority, and the value we attach to institutions is reflected in our respect for authority" (p. 46).

"Power is multi-form. By social power we mean the capacity to control the behavior of others, either directly by fiat or indirectly by the manipulation of available

means. Property and status are thus sources of power. But there are various other sources. The office a man holds gives him a certain amount of power, apart from the status attaching to it or the particular prestige of the office-holder. This is the power of bureaucracy. Akin to it is the power of any specialist; who can take advantage of his function or technique to control to his liking the actions of other men. There is also the ampler power accruing to the headship of any organization, varying with the kind of organization and its extent . . . " (p. 87).

"The agencies of publicity take higher rank in the power structure. Here we reach a source of power peculiarly modern, the control, through ownership or otherwise, of those media of communication that transmit news or promulgate opinion. We include here the motion picture industry, since it purveys news and since the films it produces inevitably are impregnated with some kind of doctrine or at least with some philosophy of life. We include the radio, though, owing to the technical conditions of broadcasting, governmental regulation and other considerations restrict tendencies to make this medium the organ of the particular doctrines or policies of the companies which own it—where the radio system is not state-administered. Where democratic conditions prevail state administration is itself subject to similar restrictions. It is otherwise with the business of publishing, especially the publishing of newspapers and periodicals. Since news-gathering is a vast and costly enterprise and since the economics of newspaper publishing limits the number of major newspapers in any area to a very small group, the power of the press is concentrated in the hands of a few men. This power of the press is increased through the development of newspaper chains under one ownership, through the syndication of articles and features, and through the hook-up of newspapers with radio stations. The newspaper has another kind of power, in that it determines the degree of publicity to be assigned to the doings of persons and organizations, apart from the publicity of paid advertising. The importance of this power depends on the fact that publicity in modern society is

not only a factor of prestige but also, for certain occupational categories and for many kinds of organization, a primary condition of success in their respective pursuits" (pp. 89-90).

(17)

Thomas Hobbes, *Leviathan* (Basil Blackwell, Oxford, Publisher)

"And as the power, so also the honour of the sovereign, ought to be greater, than that of any, or all the subjects. For in the sovereignty is the fountain of honour. The dignities of lord, earl, duke, and prince are his creatures. As in the presence of the master, the servants are equal, and without any honour at all; so are the subjects, in the presence of the sovereign. And though they shine some more, some less, when they are out of his sight; yet in his presence, they shine no more than the stars in the presence of the sun" (p. 120).

(18)

Robert E. Cushman, *Civil Liberties in the United States,* Cornell University Press, Publishers, 1956

"Community hysteria whipped up by 'yellow' press and radio stories of crimes may well make it impossible in many instances to empanel a jury which can keep out of its mind the prejudice and antagonisms thus aroused" (p. 152).

(19)

Gerth and Mills (Tr.), *From Max Weber: Essays in Sociology* (Oxford University Press, Publishers, 1946)

" . . . Every sort of 'popular justice'—which usually does not ask for reasons and norms—as well as every sort of intensive influence on the administration by so-called public opinion, crosses the rational course of justice and ad-

ministration just as strongly, and under certain conditions far more so, as the 'star chamber' proceedings of an 'absolute' ruler has been able to do. In this connection, that is, under the conditions of mass democracy, public opinion is communal conduct born of irrational 'sentiments.' Normally it is staged or directed by party leaders and the press" (p. 221).

(20)

Harold Laski, *The American Democracy* (The Viking Press, Publishers, 1948)

"In no country in the world today has the lawyer a standing remotely comparable with his place in American politics" (p. 110).

(21)

Gunnar Myrdal, *An American Dilemma* (Harper & Brothers, Publishers, 1944)

"The jury, for the most part, is more guilty of obvious partiality than the judge and the public prosecutor" (p. 552, discussing justice for Negroes in southern courts).

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PETITION NOT PRINTED
IN THE

Supreme Court of the United States

October Term, 1960
No. 187

ELIZABETH ANN DUNCAN,
Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Respondent.

On Writ of Certiorari to the Supreme Court of the State of California.

RESPONDENT'S BRIEF.

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IN THE

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RESPONDENT'S BRIEF.

Introduction.

Petitioner's approach is similar to the approach of petitioner Baldonado and the comments in respondent's brief in that case under "Introduction" are applicable here. They will not be repeated.

There are two questions, as respondent understands this Court's order, and respondent does not intend to argue matters not before this Court.

ARGUMENT.

I.

Was Petitioner's Right to the Trial Guaranteed by the Due Process Clause of the XIV Amendment Violated in View of the Conduct of the District Attorney, the Resulting Publicity, and the Other Circumstances Under Which the Trial Was Held?

Respondent understands that the sole point posed by the Court's question is whether by holding petitioner's trial before a jury in Ventura County on February 16, 1959, California deprived petitioner of a fair trial. Petitioner claims that it was impossible for her to be fairly tried before a jury at that time and place because of the newspaper publicity regarding the case.

On November 13, 1958, petitioner employed co-defendants Moya and Baldonado to murder her daughter-in-law, Olga Duncan. Moya and Baldonado did so on November 17, 1958, and subsequently received some of the money which they were promised for committing the murder. Petitioner was brought to trial three months later for the crime of murder. Under California law the first phase of the trial was concerned with whether or not petitioner was guilty of first degree murder, that being the only crime of which she could be convicted under the evidence. (Neither second degree murder nor manslaughter was involved. Petitioner was guilty of first degree murder or nothing.) If petitioner were convicted, the jury would have a further question of whether her penalty should be death or life imprisonment. The third phase of the trial (if petitioner were convicted and regardless of what the penalty

might be) would be whether petitioner was insane at the time she committed the crime.

After a lengthy trial, petitioner on March 16, 1959, was found guilty of first degree murder by the jury. There followed a trial on the issue of penalty after which, on March 20, 1959, the jury fixed her penalty at death. A jury having been waived on the issue of sanity, the matter was submitted to the court on March 24, 1959, and the court found that defendant was sane at the time of the commission of the crime.

Petitioner, in her appeal to the California Supreme Court, alleged that numerous errors occurred during the judicial proceedings against her. That court found that there were no prejudicial errors. It unanimously affirmed the judgment. *People v. Duncan,* 53 Cal. 2d 803, 350 P. 2d 103 (1960). Respondent understands that this Court's order on granting certiorari eliminated any question of the propriety of the trial judge's rulings during the course of the judicial proceedings (except insofar as jurors with opinions were "permitted" to serve, a matter treated separately under the second question posed by this Court). Thus the issue is confined to whether facts and circumstances outside of the judicial proceedings and prior to the trial deprived petitioner of a fair trial. There is no showing that any fact or circumstance occurred outside the judicial proceeding except the publication of the newspaper articles which were submitted as exhibits to an application for change of venue. Consequently, the narrow issue is whether the pre-trial publications prevented the selection of a fair and impartial jury.

A. The Sole Question Concerning Newspaper Articles Is Their Effect on Persons Exposed to Them, Not Whether They Accurately Report the Facts.

Suppose a newspaper published a story that the judges of the county held a meeting and unanimously declared that they hoped and expected that every person called as a juror for petitioner's case would vote for a verdict of first degree murder. No such meeting was held and no such statement made by any judge. Nevertheless, if the effect of reading the article was such that the reader thereafter could not fairly try petitioner, the fact that the story was wholly false would not make trial by such a person (as a juror) any less unfair.

In this connection it should be noted that the out-of-court conduct of the District Attorney is not properly in question here, nor was it in the courts below. When petitioner made an application for change of venue on the date the trial began [Tr. of R. p. 24], she incorporated by reference the affidavits theretofore filed on January 13, 1959, by co-defendant Moya to which were attached as exhibits certain newspapers. In addition petitioner submitted clippings from the Ventura Star-Free Press of January 12, 15, 20, 29, 30 and 31, 1959, and from the Oxnard Press Courier of January 13, 15, 19, 20 and 29, 1959, and February 2, 1959. The question before the judge was whether (assuming all prospective jurors would have read the articles) the effect on every reader would be that he would be unable to fairly try petitioner on the issues of guilt, penalty and sanity. Where an article purported to relate a statement by the District Attorney, the judge was not concerned with whether the District Attorney ac-

tually made such a statement or with whether it was true, but with whether the effect on prospective jurors was such that they would necessarily become and remain irremediably biased against petitioner.

While it is true that the then District Attorney, who is one of counsel on this brief, did not file an affidavit denying the making of those statements (among those attributed to him in the newspaper exhibits) which were in fact not made by him, there is a good reason for this. Whether the District Attorney made any or all of the statements attributed to him was not in issue. If a prospective juror read an article quoting the District Attorney as having said something which he actually did not say, the effect on the prospective juror would be no less if the District Attorney filed an affidavit in court denying that he made the statement.

Moreover, the out-of-court conduct of the District Attorney cannot be proved by newspaper articles attached as exhibits to an affidavit supporting a motion for change of venue. The fact that a newspaper says that the District Attorney made a certain statement is not proof that the statement was made. It is the rankest kind of hearsay. The California Supreme Court recognized this fact and carefully used such phrases as "an article quoted the district attorney as saying," as "an article quoted the district attorney at length," and as "the district attorney was reported to have made" certain statements. The California Supreme Court did not say, and it could not say, that the District Attorney did in fact make those statements because there was no proof that he did (except insofar as he admitted making one statement in his own affidavit). To emphasize the point that there was no proof of the out-

of-court conduct of the District Attorney, the California Supreme Court noted that at oral argument "the district attorney denied making most of the statements attributed to him." The California Supreme Court, in other words, recognized, as did the trial court and counsel, that the purpose of the exhibits was to determine whether all prospective jurors who might have read them would have become legally biased and not to determine whether what the articles said was true.

Respondent has treated this point at length because petitioner sought certiorari on the claim that the articles were proof of the facts stated therein and because this Court, in its order of June 27, 1960, seemed to accept this view when it asked whether "the conduct of the District Attorney" violated petitioner's right to a fair trial.

B. The Newspaper Publications Were Not Such as to Cause Every Person Who Read Them to Become Legally Biased.

Since there is nothing in the record to indicate that any particular juror actually did not act fairly and impartially, any conclusion that a juror did not so act must necessarily be based on the premise that because of the newspaper publications the juror *could not* (and therefore the juror *did not)* act fairly and impartially.

For convenience in discussing this point, respondent has divided the publications into two categories which will be separately discussed.

1. *The Reported Facts of the Crime.*

Olga Duncan, a pretty, young Santa Barbara nurse who was the wife of petitioner's attorney son, disap-

peared on November 17, 1958. She was pregnant and there soon began to be news stories about her disappearance. By the middle of December, interest in the case had spread beyond Santa Barbara County. Los Angeles newspapers carried stories about the matter and newspapers in Ventura County likewise did. At this time there was no indication that Ventura County had anything to do with the case. Then on December 13, 1958, petitioner was arrested and charged in Ventura County with having perpetrated a fraud on the court in obtaining a judgment which purported to annul the marriage between Olga Duncan and petitioner's son, Frank. [Tr. of R. p. 139.] Petitioner was subsequently convicted on this charge and is now serving an indeterminate sentence of one to fourteen years in prison. On December 21, 1958, petitioner's co-defendant Baldonado, who was then awaiting sentence in Ventura County on another charge, confessed that he murdered Olga Duncan on November 17, 1958, and buried her in Ventura County. This was reported in the newspapers on December 22, 1958. On December 26, 1958, the newspapers reported that petitioner's co-defendant Moya also confessed the murder. Both Moya and Baldonado in their confessions stated that petitioner had employed them to murder Olga Duncan.

After the transcript of the grand jury hearing was filed, it became a public record *People v. Darby*, 114 Cal. App. 2d 412, 250 P. 2d 743 (1952), and the newspapers quoted at length from the testimony, particularly that given by co-defendants Moya and Baldonado. Petitioner did not appear as a witness before the grand jury hearing. As this Court will note from the newspaper exhibits, petitioner was repeatedly quoted as deny-

ing that she ever employed Moya or Baldonado to murder Olga Duncan.

So far as the facts of the crime are concerned, any person who regularly read the newspapers could not help but conclude that Olga Duncan was dead and that Moya and Baldonado murdered her. Such a person would also know that Moya and Baldonado claimed that petitioner hired them to commit the murder and that petitioner denied that Moya and Baldonado were hired by her to commit the murder. The first question then is whether each and every person who read the newspaper articles relied upon by petitioner would necessarily be of such frame of mind that he could not, if called as a juror, fairly and impartially decide the issues in the case to be tried against petitioner.

Respondent believes that the answer to the question can be supplied only by the subjective reactions of the members of this Court after reading the limited number of exhibits applicable to petitioner's case.

If a member of this Court can read the articles without concluding that if he were to try the case, he would find petitioner guilty of first degree murder regardless of what the evidence might be, then petitioner's right to a fair trial was not infringed.[1] This is so for the

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[1]The converse is not true. If a member of this Court upon reading the newspapers feels that he would thereafter be unable to fairly try the case, it does not mean that all persons would have similar reactions. Before concluding that petitioner was deprived of a fair trial, it would be necessary to find that (1) all persons would necessarily be affected in the same manner as the Justice, (2) at least one juror read the matter deemed offensive, (3) the reaction continued to exist from the time of reading to the time of trial, (4) the juror in stating that he could try the case fairly was incorrect in his conclusion and (5) petitioner may raise the point in this Court even though at the trial she did not challenge any juror on the ground of bias.

reason that nothing in the record indicates that any of the twelve jurors had any *fixed* opinion from any source as to whether petitioner was guilty and nothing indicates that any juror was less capable of deciding the guilt or innocence of petitioner on the evidence than a member of this Court would be. On the contrary, the twelve jurors all declared that they would decide the case solely on the evidence and petitioner accepted these declarations because she did not challenge a single juror who served.

Respondent submits that a reading of the exhibits would not leave every reader in the frame of mind that petitioner should be found guilty regardless of whatever evidence might be presented in court.

2. *The Reported Remarks of the District Attorney.*

The District Attorney is quoted in the Ventura County Star-Free Press of December 22, 1958, and the Oxnard Press Courier of December 24, 1958, as being in favor of the retention of the death penalty in California. Petitioner claims that the article was a demand by the District Attorney that petitioner be executed and that the story necessarily would influence every reader against petitioner.

In the first place, the statement on its face shows that it was concerned with contemplated legislation, not with the trial of petitioner's case. That the reporter of the Ventura County Star-Free Press considered it as such is illustrated by the opening sentence of the story: "District Attorney Roy Gustafson saw the Duncan murder as reason for a continuation of California's death penalty." The headline writer saw it in the same light because the headline reads: "D. A.

Urges Death Term in Killings." There was only *one* killing involved in the instant case. The plural word "Killings" clearly indicates that the statement related to the retention of capital punishment for murders in general and not for this particular murder alone. There was nothing unusual in the District Attorney's public statement on this subject because he had often been quoted in his appearances before the California Legislature in opposition to the repeal of capital punishment. (See, for his most recent testimony, Report of the California Senate Committee on Judiciary, March 9, 1960. Copies lodged with Clerk.). In fact, Coronet magazine (Jan., 1960, p. 136) described him as "one of the nation's most outspoken advocates of capital punishment."

In the second place, when this statement was published petitioner was not under arrest for, nor charged with, the murder. Her name was not mentioned in the statement. It was yet to be determined who would be charged with being the perpetrators of the murder much less who, if anyone, would ultimately be convicted thereof.

Certain it is that not every person who read the statement of the District Attorney was persuaded to his point of view regarding capital punishment. The only reactions received by the newspaper to the published statement were protests against it as evidenced by published letters to the editor on December 24, 1958, December 30, 1958, and January 3, 1959. [Tr. of R. pp. 17-21.] Moreover, 23 of the 83 prospective jurors were excused on challenges for cause by respondent because of their conscientious scruples against the death penalty. Again, it is obvious that if those 23 persons read the

statement of the District Attorney, they were not in the least persuaded by it.

An article of December 30, 1958, in the Ventura County Star-Free Press set forth what purported to be the District Attorney's reasons why he would seek the death penalty as to petitioner and her co-defendants. (The fact that the article was not true is indicated by the issue of the same newspaper on February 24, 1959 [Ex. A-14 to Declar.; Tr. of R. (Moya Case) p. 66], reporting that the District Attorney had not even then stated whether he would seek the death penalty for petitioner.) However, respondent acknowledges that the truth or falsity of the publication is not in issue. The question is whether those who read the article would become legally biased so that they could not fairly try the petitioner. Whether any prospective juror concluded from reading the newspapers that the District Attorney would seek the death penalty against petitioner is immaterial because no prospective juror who came into the courtroom could possibly have failed to realize, when the examination of jurors began, that the District Attorney would seek the death penalty if petitioner were convicted. Each prospective juror was asked concerning his views with respect to capital punishment and those who had conscientious scruples against it were, in accordance with California law, excused on a challenge for cause by respondent. One would have to close his eyes to reality to believe that any prospective juror would conclude that the questions about capital punishment had no purpose whatever. Assuming that a prospective juror read and believed the article stating that the District Attorney would seek the death penalty against petitioner, how could that have adversely af-

fected petitioner when, in fact, the District Attorney ultimately did seek the death penalty against petitioner?

Petitioner seeks to leave the impression that purported comments from the District Attorney of Ventura County were more damaging than they otherwise would have been because Ventura County is a small, rural area (and presumably everyone knew the prosecutor). This Court can take judicial notice of the 1960 preliminary census figures. They show that of the more than 3,100 counties in the United States, Ventura County ranks in the upper 5% in population. Moreover, of the 34 prospective jurors asked by petitioner's counsel as to whether they knew the District Attorney, only two replied in the affirmative [Tr. of R. pp. 334, 491] and they did not serve as jurors.

Petitioner erroneously assumes not only that the District Attorney actually made the out-of-court statements attributed to him but also that it is misconduct for an attorney to make an out-of-court statement. The fact is that in California there is no rule of professional conduct prohibiting attorneys from making out-of-court statements. (See 34 Calif. S. B. J. 859 [1959] for a proposal that there be such a rule in California.)

Whether attorneys for the defendants in the three cases actually made out-of-court statements about the cases to newspaper reporters is unknown to respondent. However, the newspaper exhibits before this Court contain no less than 69 reports of out-of-court statements purportedly made by counsel for defendants to newspaper reporters. (See Appendix A.) Typical of the comments reported are those set out in Appendix B.

Petitioner complains that the press coverage of her trial "was intensified by camera coverage." Respond-

ent invites this Court's attention to the fact that it was the District Attorney who objected to courtroom photography and the petitioner and her counsel who wanted it. [Tr. of R. pp. 259-260.]

Even if, contrary to the facts and the California law, this Court concluded (1) that out-of-court statements were made by attorneys on both sides and (2) that the attorneys were guilty of misconduct in making them, it must be remembered that the proceedings in this Court are not for the purpose of disciplining attorneys by reversal of the judgments of the Supreme Court of California or by any other means. The sole question here is whether petitioner's conviction was had under circumstances depriving her of a fair trial.

Respondent does not understand petitioner's suggestion that the judgment should be reversed to "communicate this point [the impropriety of making statements to newspapers] to the public prosecutors" and "for its therapeutic value in this instance and its preventive effects in future cases" in the light of her admission that this Court should not "discipline prosecutors for misconduct by reversing judgments of conviction." These positions seem to be inconsistent. At any rate, respondent believes that if petitioner was deprived of a fair trial, the judgment should be reversed whatever the cause was and if she was not, the judgment should be affirmed.

C. Assuming That Some Published Report Would Cause Every Reader to Become Legally Biased, There Is No Proof That Any Juror Who Served Read That Report.

Obviously nothing that occurred outside of the judicial proceedings and prior to the trial could possibly have affected petitioner's right to an impartial jury un-

less the event which occurred prevented at least one of the twelve jurors who served from trying the case fairly and impartially. Petitioner claims that published reports did so. Even assuming that one or more of the publications would have caused every reader to become legally biased, petitioner has not shown that any juror read those particular reports.

It is true that most of the 83 prospective jurors had heard or read something about the murder of Olga Duncan. However, despite the fact that there were 63 days between the date of the first newspaper exhibit relied upon by petitioner (December 15, 1958) and the start of petitioner's trial (February 16, 1959), only the following newspaper issues (or clippings therefrom) are in the record in petitioner's case:

Ventura Star-Free Press	20
Oxnard Press Courier	18
Los Angeles Examiner	1
Los Angeles Times	5
Los Angeles Herald Express	4

No juror was shown to have read the Los Angeles Examiner or the Los Angeles Herald Express. Jurors Arend and Gosney usually read the Los Angeles Times, but whether they read any of the issues in the record was not disclosed. [Tr. of R. pp. 308, 325.] Jurors who ordinarily read the Ventura Star-Free Press were Osborne [Tr. of R. p. 300], Newhart [Tr. of R. p. 486], Bartels [Tr. of R. p. 504], and Missimer [Tr. of R. p. 594]. It was not shown what newspapers Jurors Gramckow [Tr. of R. pp. 549-555], Calhoon [Tr. of R. pp. 611-616], Berch [Tr. of R. pp. 629-637], Dewey [Tr. of R. pp. 650-657], or Horrell [Tr.

of R. pp. 665-671] read, much less whether any of them read any particular issue now in the record.

It is a well-known fact that most persons read newspapers only sketchily. Mr. Justice Frankfurter is quoted as saying: "Very few people ever read anything except the headlines." Philips, Felix Frankfurter Reminisces, p. 169 (1960). This is borne out by the examination of the twelve jurors who served and respondent respectfully invites the Court's attention to the cited portions of the record containing the examination of these jurors as to what they read and what they remembered about the case.

Even assuming that some particular report in one of the newspaper exhibits in this case is deemed by this Court to be so damaging that anyone who read it would necessarily thereafter be unable to be fair to petitioner, the record is completely barren of any showing that any juror read the report. With respect to the alleged quotations of the District Attorney, for example, the record shows that only Jurors Osborne [Tr. of R. p. 301] and Hall [Tr. of R. p. 646] had read any statement purportedly made by the District Attorney, but the nature of what they read was not asked by appellant's counsel.

The law in this situation is clear. In *People v. Chapman*, 93 Cal. App. 2d 365, 372, 209 P. 2d 121, 124 (1949), defendant claimed that a pre-trial newspaper article was so damaging that he could not be fairly tried in Alameda County. The appellate court rejected his claim with the observation that "there is no evidence that any newspaper reports were read by any member of the jury. . . ." This Court denied certiorari. *Chapman v. People*, 338 U. S. 943, 94 L. Ed. 581, 70 S.

Ct. 423 (1950). In *People v. Cook*, 39 Cal. 2d 496, 499, 247 P. 2d 567, 568 (1952), defendant claimed "that prior to the trial the district attorney aroused the prejudice of the people against him by making speeches about the case over the radio and at various civic meetings." Defendant's claim of lack of fair trial was rejected by the Supreme Court of California with the observation that "there is no evidence that any of the jurors who tried the case heard the speeches which were assertedly made."

If this Court believes that some particular article or articles would necessarily cause a reader to become legally biased against petitioner, respondent is at a loss to know how this Court can find that any juror read the offensive matter.

D. Assuming That at Least One Juror Became Legally Biased by What He Read, There Is No Proof That He Retained That Bias at the Time of Trial.

The newspaper articles in petitioner's case were published between December 15, 1958, and February 2, 1959. Petitioner's trial began February 16, 1959. Even if this Court finds that one of those articles was so inflammatory that every reader would necessarily be influenced, consciously or unconsciously, to desire to find petitioner guilty regardless of the evidence and even if this Court finds (despite the complete absence of any showing in the record) that some juror read that article, the question still remains whether the juror retained that bias to the time of trial.

California recognizes that the fact that a whole community is aroused against a defendant by newspaper publications some time prior to trial is no proof that a

fair and impartial jury cannot be obtained from that community at a later date *People v. Yeager*, 194 Cal. 452, 229 Pac. 40 (1924), (offensive publication 17 days before trial); *People v. Hall*, 220 Cal. 166, 30 P. 2d 23 (1934), (18 days); *People v. Goldenson*, 76 Cal. 328, 19 Pac. 161 (1888), (three weeks); *People v. Suniga*, 128 Cal. App. 2d 738, 275 P. 2d 914 (1954), (three weeks); *People v. Mendes*, 35 Cal. 2d 537, 219 P. 2d 1 (1950), (three months); *People v. Burwell*, 44 Cal. 2d 16, 279 P. 2d 744 (1955), (four months).

E. Two California Courts Held That the Published Reports Would Not Make It Impossible to Obtain a Fair Jury.

Under California law the trial judge is required to grant a motion for change of venue if "a fair and impartial trial cannot be had in the county" where the case is pending. Cal. Penal Code, §§1033, 1035. Petitioner made such a motion on February 16, 1959, supported by the aforementioned newspaper exhibits, but petitioner's counsel did not argue the motion. [Tr. of R. p. 30.] The motion was denied without prejudice to renewing it again after examination of the prospective jurors. [Tr. of R. p. 30.] It was renewed on February 20, 1959, again practically without argument by petitioner's counsel, and denied. [Tr. of R. pp. 672-676.] The trial judge said:

> "I am thoroughly convinced that this jury, as constituted at the present time, will give to this defendant an absolutely fair and impartial trial and therefore the motion for change of venue is denied." [Tr. of R. p. 676.]

The trial judge thus did not believe, before the examination of the jurors, that prospective jurors who read the newspapers would thereafter not be able to give petitioner a fair trial. The trial judge was obviously convinced, after the examination of the jurors, that the particular twelve jurors who sat in the box would be able to give petitioner a fair trial irrespective of what any of them may have read or heard about the case. The Supreme Court of California was asked by petitioner to rule that the trial judge was wrong in this conclusion. Instead, that court affirmed the rulings of the trial judge denying the motions for change of venue. *People v. Duncan,* 53 Cal. 2d 803, 350 P. 2d 103 (1960).

The California Supreme Court is well aware of the requirement that trial be had before impartial jurors. In *People v. McKay,* 37 Cal. 2d 792, 236 P. 2d 145 (1951), the trial judge denied a motion for change of venue. Defendants' convictions by a jury were reversed by the Supreme Court for failure of the trial judge to order a change of venue. The court said:

> ". . . However conscientious the members of the jury may have been, it cannot reasonably be concluded that they could so divorce themselves from their past experiences and present surroundings that a fair and impartial trial could be had."

Eight California judges (the trial judge and seven Justices of the Supreme Court) examined the newspapers now before this Court and not one found that the newspaper articles were such as to prevent prospective jurors from being fair. These views should be entitled to great weight in this Court.

F. Petitioner at the Trial Did Not Believe That Any Juror Was Legally Biased.

Eighty-three prospective jurors were examined in petitioner's case. This is not a large number for a capital case. There were, as heretofore stated, three possible issues which the jury might be required to determine: guilt, penalty, and sanity. Petitioner's counsel asked no questions whatever regarding any bias which any juror might have on the issues of sanity or penalty. Petitioner's counsel did inquire with respect to opinions prospective jurors had on the issue of guilt and less than half (40) had formed opinions from what they heard or read. Of these 40, only 17 were found to be of such a frame of mind that they could not decide the case on the evidence notwithstanding their opinions. All of these 17 were excused on challenges for cause by petitioner. Almost all of the remaining 23 were excused for one reason or another. Three of the 12 jurors who were sworn to try the case had opinions on the issue of guilt, but petitioner did not challenge a single one of them for cause or for any other reason!

A ground of challenge to a juror is "the existence of a state of mind on the part of the juror in reference to the case, or to either of the parties, which will prevent him from acting with entire impartiality and without prejudice to the substantial rights of either party." Cal. Penal Code, §1073. Petitioner was well aware of this ground because she invoked it 28 times and, except as to prospective jurors who were otherwise excused, the trial judge sustained all of her challenges except as to six prospective jurors all of whom were subsequently excused on peremptory challenges. Thus respondent re-

peats and emphasizes that not one person who ultimately served as a juror was challenged by petitioner for bias or for any other reason. Certainly this is extremely strong evidence of petitioner's then belief that neither the newspaper articles nor anything else resulted in any juror being legally biased, partial or prejudiced.

G. Summary.

In *Stroble v. California*, 343 U. S. 181, 96 L. Ed. 872, 72 S. Ct. 599 (1952), this Court was considering a California murder conviction which was preceded by intense newspaper publicity. Petitioner there had been described in the newspapers as a "werewolf", a "fiend" and a "sex-mad killer". His confession had been released by the District Attorney who also announced to the press his belief that petitioner was guilty. In finding that petitioner was not deprived of a fair trial, this Court said:

> ". . . Indeed, at no stage of the proceedings has petitioner offered so much as an affidavit to prove that any juror was in fact prejudiced by the newspaper stories. He asks this Court simply to read those stories and then to declare, over the contrary finding of two state courts, that they necessarily deprived him of due process. That we cannot do, at least where, as here, the inflammatory newspaper accounts appeared approximately six weeks before the beginning of petitioner's trial, and there is no affirmative showing that any community prejudice ever existed or in any way affected the deliberation of the jury."

In the case at bar there is no affidavit that any juror was in fact prejudiced. Most of the newspaper ac-

counts of which petitioner complains were published at least six weeks before the beginning of petitioner's trial. No hostile acts or other facts were shown which indicated any community, as opposed to individual, prejudice against petitioner. Neither petitioner nor the victim was a resident of the county of trial and all of the events concerning petitioner's plot to kill the victim took place in the neighboring county of Santa Barbara. Petitioner points to no statement of fact in any newspaper story which was not borne out by the evidence introduced at her trial. Petitioner never confessed and there was never any publication falsely stating that she had confessed. On the contrary, the newspapers consistently quoted her and her attorney as denying her guilt.

In *United States v. Handy*, 351 U. S. 454, 100 L. Ed. 1331, 76 S. Ct. 965 (1956), petitioner claimed he had been deprived of a fair trial by newspaper publicity. This Court said:

> ". . . [P]etitioner asks this Court, in effect, to infer that the news coverage of the robbery and proceedings prior to petitioner's trial, including the Foster-Zeitz trial, created such an atmosphere of prejudice and hysteria that it was impossible to draw a fair and impartial jury from the community or to hold a fair trial. . . . [W]e are asked to read the news reports and the testimony as to other incidents and to find, contrary to the Supreme Court of Pennsylvania and two federal courts, that these reports and incidents did create such an atmosphere that it infected the jurors and deprived petitioner of a fair trial on the evidence presented to them. We see no justification in the record to warrant our so finding."

In the case at bar, the record affirmatively shows that all of the jurors selected said that they could and would be fair and impartial notwithstanding what they read and that petitioner believed the jurors because she did not challenge a single one for cause. The Supreme Court of California held that the newspaper accounts were not such as to have required the trial judge to have granted her motions for change of venue.

In order to reverse the judgment, this Court would have to do the following things:

1. Find that one or more of the newspaper articles were so inflammatory that every reader would be prejudiced against petitioner.

2. Find that at least one juror read the particular articles deemed to be offensive.

3. Find that the prejudice thereby engendered in that juror continued from the date of reading to the date of trial.

4. Find that the juror falsely stated under oath that he could and would give petitioner a fair trial.

5. Find that petitioner's failure to challenge any juror is of no significance.

Respondent submits that there is nothing in the record which would support such findings.

Respondent does not claim that the publicity did not result in some prospective jurors becoming legally biased. It obviously did because 17 prospective jurors admitted that they had fixed opinions. But respondent does claim that from the fact that some persons become biased, it does not follow that all others must neces-

sarily be likewise biased. Not all persons are persuaded to identical conclusions by the same article or the same speech.

The newspaper publicity in the case at bar admittedly gave rise to the opportunity for some prospective jurors to form fixed opinions as to petitioner's guilt. But as Mr. Justice Holmes, writing for this Court, stated in *Holt v. United States*, 218 U. S. 245, 251, 54 L. Ed. 1021, 1029, 31 S. Ct. 2 (1910), "If the mere opportunity for prejudice or corruption is to raise a presumption that they exist, it will be hard to maintain jury trial under the conditions of the present day."

What was recently said in *Irvin v. Dowd*, 271 F. 2d 552, 554-555 (C. A. 7th Cir., 1959), certiorari granted 4 L. Ed. 2d 542 (1960), is appropriate:

> ". . . It is not surprising that, the more extensive the news coverage of a crime and the more wanton and unjustified the crime itself, the greater and more extensive is the indignation of citizens. Such indignation, varying in its degree according to the violence of the crime, and geographically extensive with the area of news distribution, undoubtedly causes many people to form impressions or beliefs as to the guilt or innocence of suspected or indicted persons. In these days of widely effective and thorough news distributing instrumentalities such as the telephone, newspaper, radio and television, as well as rapid travel of persons by automobiles, trains and airplanes, hardly a person anywhere in a state, or in fact in the United States, is long ignorant of the details of crimes committed in any state (or in this country), un-

less he be completely mentally incompetent or is in solitary confinement in a jail. In fact, it may well be that into the latter place the grapevine reaches. We no longer live in a day when what happened in the next county was learned only by conversation with a traveling man or a brakeman on the way freight train. It is into this modern society with facilities for quick and broad news coverage that a person who commits six murders projects himself. When apprehended, he is entitled to a fair trial and is to be accorded due process of law, according to the existing circumstances.

"Our problem in its last analysis is whether the general resentment of a people following the publication by news distributing media of information in regard to a series of murders may be relied upon to prevent the state from prosecuting a person indicted for these crimes, even though his trial be held before an unbiased judge and a jury is selected in accordance with established principles applicable to such a case. If the state is so prevented from trying such a person, it means that the commission within a state of a multiplicity of criminal acts, followed by the usual publicity, actually immunizes the offender from prosecution. We reject such a conclusion as the law of this circuit."

It is of particular significance that in the present case nothing that appeared in the newspapers was not brought out during the trial. If the newspapers had published some particularly damaging facts about petitioner which either were not or could not have been

introduced as evidence at the trial, the possibility of prejudice would have been increased. Similarly, if the newspapers had published an untrue report that petitioner had confessed, the possibility of prejudice would have been increased. But here this Court must determine whether petitioner was deprived of a fair trial by pre-trial newspaper accounts of facts all of which (together with many more) the jurors ultimately heard from witnesses.

If such accounts are held to deprive an accused of a fair trial, then a large step in the indirect censorship of the press will have been taken. Public officers will conceal all information from the press (even though experience demonstrates that many crimes are solved and many wanted criminals are located through news items) for fear that publication of the information would jeopardize the ultimate trial of the accused. California will be forced to change its laws so that transcripts of preliminary examinations and grand jury hearings, which are now public records, will be made secret. (Even so, enterprising newspapers could nevertheless jeopardize a trial by printing information about a crime obtained from lay witnesses and other non-public sources.) Except for holding the newspaper in contempt of court, this Court will have for all practical purposes effectively forbidden the publication of facts about the most interesting, significant and important criminal cases in this country. (Obviously, the minor, routine, unimportant cases get little or no publicity.)

It is no answer to say that where newspapers have given intensive publicity to a case, the trial should be delayed or moved to a different county. If the case is of widespread interest, the same publicity can be ex-

pected even though the trial takes place at a different time or place from that originally scheduled. Neither is it any answer to say that if the trial takes place as scheduled, a new trial should be granted. Again, it is naive to believe that similar publicity would not accompany the new trial.

When, as here, there is no editorializing, no demands for a particular result, no slanting of the news, no untrue statements, no publication of inadmissible facts and when, as here, the publicity does not result in any threat of violence, display of emotions or other conduct indicating an inflamed community, then the mere extensive news coverage should not be held to have deprived a defendant of a fair trial.

Finally, one important distinction should be noted between the case at bar and cases arising from federal trial courts. In *Marshall v. United States,* 360 U. S. 310, 3 L. Ed. 2d 1250, 79 S. Ct. 1171 (1959), newspaper articles read by jurors during the trial were held to be so prejudicial that a new trial was granted by this Court. However, this Court acted in the exercise of its "supervisory power to formulate and apply proper standards for enforcement of criminal law in the federal courts". It did not invoke the Due Process Clause (of the V Amendment). While this Court undoubtedly would invoke the Due Process Clause (of the XIV Amendment) to reverse a state conviction if pre-trial publicity actually deprived a defendant of a fair trial, it has never done so. Respondent submits that there is less basis for doing so in the instant case than in other cases which have been before this Court.

II.

Was There a Violation of Petitioner's Right to a Fair Trial, as Guaranteed by the Due Process Clause of the XIV Amendment of the Constitution of the United States of America, Where in a Trial of a Capital Offense by Jury, the Trial Court Permitted to Remain in the Jury Box and Sit in Judgment, Three Jurors Who Had Entered the Jury Box With Fixed Opinions as to Petitioner's Guilt, and Retained Such Opinions While Being Examined on Voir Dire?

If this is in fact the question at issue, and if it has not been waived by the failure of petitioner to raise it below, then it must be answered in the affirmative and the decision reversed. A "fixed opinion" is one that is "firm", "set", or "immovable". See Webster's International Dictionary. A person holding a "fixed opinion" is one who is not capable of judging a case solely on the evidence presented and according to the instructions of the court, and therefore is not a qualified juror. See 31 Am. Jur., Jury §212 (1958). But the mere designation by the petitioner of the opinions of three jurors in this case as "fixed" does not make them "fixed". See *United States v. Titus*, 210 F. 2d 210, 213-214 (C. A. 2d Cir., 1954) (dictum). To the contrary each of these three jurors (Berch, Hall and Harrell) stated under oath on *voir dire* that his opinion would be set aside and would not affect his decision. [Tr. of R. pp. 636, 648, 671.]

Therefore, respondent understands the real question here to be whether or not there was a violation of petitioner's right to a fair trial as guaranteed by the federal constitution when among the twelve jurors there

were three jurors who entered the jury box with opinions as to petitioner's guilt, who stated on *voir dire* that they would disregard their opinions and decide the case solely on the evidence, and who were never challenged for cause by the petitioner.

A. The Question as to the Bias of the Three Jurors Was Never Raised Below and Therefore Is Not Properly Before This Court.

On the jury panel, as it was finally constituted, there remained three jurors, Berch, Hall and Horrell, who had testified on *voir dire* that prior to the trial they had formed opinions concerning the guilt of the accused. [Tr. of R. pp. 635, 647, 670.] These jurors were subjected to intensive questioning by counsel for the petitioner to determine the nature of these opinions and the ability of each juror to set them aside. [Tr. of R. pp. 629-736, 641-648, 666-671.] At the conclusion of this questioning petitioner's counsel was obviously satisfied that these jurors would render an impartial verdict based solely on the evidence presented at the trial. Thus, each of them was *expressly* passed for cause without challenge. [Tr. of R. pp. 637, 648, 671.]

Now, for the first time, petitioner wishes to challenge these jurors for bias on the basis of the answers which were made on *voir dire*. This issue was not even presented to the Supreme Court of California, for there the only questions as to the qualifications of prospective jurors were in regard to four individuals who in fact did not hear the case. (See App. Op. Br. pp. 11-29; App. Reply Br. pp. 1-19. The Brief *Amici Curiae* in support of Appellants did not treat the issue.)

The California Legislature has made express provision with regard to the time for taking challenges to individual jurors. Section 1068 of the California Penal Code provides:

> "Challenge, When Taken. It must be taken when the juror appears, and before he is sworn to try the cause; but the Court may for cause permit it to be taken after the juror is sworn, and before the jury is completed."

The California courts have consistently held that no objection may be taken after the prescribed time, whether the challenge be peremptory or for cause. *People v. Sanford*, 43 Cal. 29, 31-32 (1872); *People v. Stonecifer*, 6 Cal. 405, 410-411 (1856) (specifically overruling a prior inconsistent case); *People v. Meehan*, 124 Cal. App. 2d 589, 593, 269 P. 2d 70, 72-73 (1954); *People v. Kerr*, 113 Cal. App. 2d 90, 94, 247 P. 2d 927, 929 (1952); *People v. Young*, 21 Cal. App. 2d 423, 427-428, 69 P. 2d 203, 205 (1937); *People v. Marconi*, 118 Cal. App. 683, 690-691, 5 P. 2d 974, 977 (1931); *People v. Cross*, 64 Cal. App. 443, 445, 221 Pac. 684 (1923).

It has been held specifically that a challenge to a juror on the ground that he had formed an opinion prior to the trial of the cause is waived if the objection is not raised at the proper time, *People v. Cross, supra*, even when it is alleged that that juror's opinion was so fixed that he could not set it aside and base his decision solely on the evidence presented at the trial. *People v. Young, supra.*

The reason for this rule is evident: "An accused cannot be permitted to accept a jury, remain silent in.

the face of claimed irregularities in its selection and impanelment, speculate on obtaining a favorable verdict, and then . . . [after conviction] challenge those claimed irregularities. . . . If an accused omits at the proper time to interpose his objections to any irregularities, he is deemed to have waived them." *People v. Kerr, supra; People v. Sanford, supra.* Otherwise, defendants in all criminal cases would be encouraged to approve of one juror on the panel whose qualifications could later be challenged for this would assure defendant of a new trial in case of conviction.

The only conceivable argument available to petitioner is that by denying challenges for cause taken against four prospective jurors, Porter, Saavedra, Flynn and Behrens [Tr. of R. pp. 283, 296, 412, 479], all of whom were removed by peremptory challenges [Tr. of R. pp. 430, 414, 462, 500], the trial judge conclusively demonstrated that similar challenges for cause would be futile.

Such an argument has no basis in fact in the present case. Section 1076 of the California Penal Code provides in part that:

> ". . . . [N]o person shall be disqualified as a juror by reason of having formed or expressed an opinion upon the matter or cause to be submitted to such jury, founded upon public rumor, statements in public journals, circulars, or other literature, or common notoriety; *provided,* it appear to the court, upon his declaration, under oath or otherwise, that he can and will, notwithstanding such an opinion, act impartially and fairly upon the matters to be submitted to him." (Emphasis added.)

It is clear from this that the trial judge must decide the question of bias separately for each juror, and that this can only be done by a careful evaluation of the prospective juror's statements and of his demeanor. As the Supreme Court of the United States said in *Reynolds v. United States,* 98 U. S. 145, 25 L. Ed. 244, 247 (1878):

> ". . . In considering such questions in a reviewing court, we ought not to be unmindful of the fact we have so often observed in our experience, that jurors not unfrequently seek to excuse themselves on the ground of having formed an opinion, when, on examination, it turns out that no real disqualification exists. In such cases the manner of the juror while testifying is oftentimes more indicative of the real character of his opinion than his words."

It seems obvious that the fact that the trial judge believed certain statements of prospective jurors Porter, Saavedra, Flynn and Behrens could have no bearing on whether or not he would believe similar statements made by jurors Hall, Berch or Horrell. This is clearly illustrated by the fact that the trial judge did uphold numerous challenges for cause made by petitioner's attorney. Of a total of 28 prospective jurors so challenged, 18 were dismissed on petitioner's own challenges. (These persons were Campbell [Tr. of R. p. 194], Keller [Tr. of R. p. 200], Holt [Tr. of R. p. 203], Holzer [Tr. of R. p. 212], Carmack [Tr. of R. p. 213], Hunt [Tr. of R. p. 216], Baradat [Tr. of R. p. 222], Boynton [Tr. of R. p. 227], Eads [Tr. of R. p. 232], King [Tr. of R. p. 257], Hawkins [Tr. of R. p. 337],

Fenner [Tr. of R. p. 352], Dodson [Tr. of R. p. 373], Bourne [Tr. of R. p. 456], Hall [Tr. of R. p. 528], Sollen [Tr. of R. p. 604], Dodds [Tr. of R. p. 627], and Young [Tr. of R. p. 665]. References are to the pages where the rulings of the trial judge appear.) Four others were excused by stipulation or on a challenge by respondent. (These persons were Knutson [Tr. of R. p. 439], Gisler [Tr. of R. p. 453], Morgan [Tr. of R. p. 471], and Wayman [Tr. of R. p. 590].)

The court denied petitioner's challenges to the other six prospective jurors. (These persons were Porter [Tr. of R. p. 283], Saavedra [Tr. of R. p. 296], Flynn [Tr. of R. p. 412], Behrens [Tr. of R. p. 479], Johnson [Tr. of R. p. 537], and Bushman [Tr. of R. p. 566].) It is important to note, however, that with respect to two of these six persons, Porter and Saavedra [Tr. of R. pp. 283, 296], petitioner's counsel, after the court's rulings, apparently withdrew his challenges by specifically passing for cause. He did not do so with respect to the other four.

The court's ruling as to prospective juror Dodds is of particular interest. The latter admitted on *voir dire* that she had formed an opinion of the merits of the case prior to trial. [Tr. of R. p. 623.] However, she went on to testify that she could set aside her opinion and render a verdict solely on the evidence to be presented and in accordance with instructions from the court. [Tr. of R. pp. 624-627.] Nevertheless, the court upheld a challenge for cause by defense counsel. [Tr. of R. p. 627.] It is important to note that this occurred *after* the denial of the challenge for cause to prospective jurors Porter, Saavedra, Flynn and Behrens

but *prior to* the examination of jurors Hall, Berch and Horrell. In view of this it can hardly be claimed that challenges to the latter three jurors would necessarily have been in vain. See also Tr. of R. pp. 193-194, wherein the court, over the opposition of the District Attorney, upheld a challenge for cause to prospective juror Campbell because of the latter's opinion, despite the fact that he stated he could and would try the case solely on the evidence presented.

That the issue of bias is one to be determined on an individual basis with respect to each prospective juror is recognized by the petitioner. She lists factors other than the pre-trial opinions of the jurors which she alleges fortify her contention that the jurors could not be impartial. For example, petitioner points out that on *voir dire*, juror Hall stated that a dear friend of hers had been recently murdered, that her sister was a policewoman and that her father had been a policeman in California. Certainly the petitioner cannot seriously contend that the court's determinations with respect to prospective jurors Porter, Saavedra, Flynn and Behrens made it futile to challenge juror Hall with respect to these additional factors.

The only conclusion that one can draw is that petitioner's counsel, after interrogating these jurors thoroughly, satisfied himself that they would determine the case fairly and impartially, and that there was no need to call upon the court to make a ruling as to bias. This is substantiated by the fact that petitioner on appeal never claimed that these three jurors would have been challenged for cause except that such a challenge would have been in vain.

Time and again this court has held that it will not entertain a constitutional issue in a case arising from a state court unless that issue was properly raised below, in the right court at the right time in accordance with state procedural rules. *Edelman v. California*, 344 U. S. 357, 97 L. Ed. 387, 73 S. Ct. 293 (1953); *Stembridge v. Georgia*, 343 U. S. 541, 96 L. Ed. 1130, 72 S. Ct. 834 (1952); *Parker v. Illinois*, 333 U. S. 571, 92 L. Ed. 886, 68 S. Ct. 708 (1948); *Herndon v. Georgia*, 295 U. S. 441, 79 L. Ed. 1530, 55 S. Ct. 794 (1935); *Brown v. Massachusetts*, 144 U. S. 573, 36 L. Ed. 546, 12 S. Ct. 757 (1892); see Stern & Gressman, Supreme Court Practice, (2d ed. 1954); Robertson & Kirkham, Jurisdiction of the Supreme Court of the United States (Wolfson & Kurland, ed. 1951), §§66, 70, 75.

Thus, under state law, if a constitutional issue not properly interposed at the trial level is considered waived and for that reason is not heard by the state appellate courts, the Supreme Court of the United States will not hear it either. *Stembridge v. Georgia, supra; Brown v. Massachusetts, supra.* Similarly, even if a federal constitutional issue arises at the trial level, failure to pursue the question on appeal in the manner prescribed by state law may constitute a waiver of the issue and eliminate the possibilities of Supreme Court review. *Parker v. Illinois, supra; Herndon v. Georgia, supra.*

In the case at bar not only were the three jurors not challenged for cause at the trial, but no attempt was made on appeal to raise the question as to the constitutional validity of their presence on the jury. Even the petition for rehearing to the Supreme Court of California was devoted solely to the qualifications of prospective jurors Porter, Saavedra, Flynn and Behrens. (Pet. for Rehrg., pp. 8-11.) Obviously, since the issue was never raised below, this court has no choice but to dismiss this issue from its consideration.

B. The Jurors Who Actually Tried the Cause Were Impartial and Unbiased.

Section 1076 of the California Penal Code provides:

> "In a challenge for implied bias, one or more of the causes stated in section one thousand seventy-four must be alleged. In a challenge for actual bias, the cause stated in the second subdivision of section one thousand seventy-three must be alleged; but no person shall be disqualified as a juror by reason of having formed or expressed an opinion upon the matter or cause to be submitted to such jury, founded upon public rumor, statements in public journals, circulars, or other literature, or common notoriety; *provided*, it appear to the court, upon his declaration, under oath or otherwise, that he can and will, notwithstanding such an opinion, act impartially and fairly upon the matters to be submitted to him. The challenge may be oral, but must be entered in the minutes of the court or of the phonographic reporter."

This provision is not unique to California. In fact, there are 23 states which have statutes that are substantially the same.[2] One state has adopted such a provision by court rule[3] and at least 20 other states have adopted it as a rule of common law or statutory interpretation.[4] The Supreme Court of the United States first approved of the rule in *Reynolds v. United States*, 98 U. S. 145, 25 L. Ed. 244 (1878), *supra*, and it has been the law in the federal courts ever

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[2]Alaska Comp. Laws Ann. § 55-7-48 (1949); Colo. Rev. Stat. Ann. c. 78-5-3 (1953); Fla. Stat. Ann. § 913.03(10) (1941); Ill. Rev. Stat. c. 78, § 14 (1959); Ind. Stat. Ann. § 9-1504 (1956); Ky. Crim. Code § 209 (1959); La. Rev. Stat. § 351(1) (1950); Miss. Code Ann. § 1763 (1942); Mo. Rev. Stat. §546.-150 (1949); Mont. Rev. Code Ann. Tit. 94-7122 (1947); Mich. Stat. Ann. § 28.1033 (1954); No. Dak. Rev. Code Tit. 29-1738 (1943); Nev. Rev. Stat. c. 175.115(2) (1959); Neb. Rev. Stat. § 25-1636 (1943); N. Y. Code Crim. Proc. § 376(2); Ore. Rev. Stat. § 17.445 (1959); Ohio Rev. Stat. Ann. § 2945.25(B) (Page 1954); So. Dak. Code Tit. 34.3620 (Supp. 1960); Tenn. Code Ann. § 40-2507 (1956); Texas Code Crim. Proc. art. 616(13), 632; Utah Code Ann. Tit. 77-30-21 (1953); Wash. Rev. Code Tit. 10.49.040 (1959) (which refers to Tit. 4.44.190); Wyo. Stat. § 7-225 (1957).

[3]Ariz. Rule of Crim. Proc. 220.

[4]*Willingham v. Alabama*, 262 Ala. 550, 80 So. 2d 280 (1955); *Sneed v. State*, 47 Ark. 180, 1 S. W. 68 (1886); *State v. Laudano*, 74 Conn. 638, 51 Atl. 860 (1902); *Johnson v. State*, 209 Ga. 333, 72 S. E. 2d 291 (1952); *Territory of Hawaii v. Robello*, 20 Hawaii 7, 15-18 (1910); *State v. Anderson*, 33 N. W. 2d 1 (Iowa 1948); *Kansas v. Kornstett*, 62 Kan. 221, 61 P. 805 (1900); *Commonwealth v. Snyder*, 282 Mass. 401, 185 N. E. 376 (1933), aff'd. 291 U. S. 97 (1934); *Garlitz v. State*, 18 Atl. 39, 71 Md. 293 (1889); *State v. Winder*, 183 N. C. 776, 111 S. E. 530 (1922); *State v. Spencer*, 21 N. J. L. 196 (1846); *State v. Rodriguez*, 23 N. M. 156, 167 P. 426 (1917); *State v. Howard*, 17 N. H. 171, 186-195 (1945); *Fleming v. State*, 62 Okla. Crim. 446, 72 P. 2d 403 (1937); *Commonwealth v. Richardson*, 392 Pa. 528, 140 A. 2d 828 (1958); *State v. Mittle*, 120 S. C. 526, 113 S. E. 335 (1922); *McCue v. Commonwealth*, 103 Va. 870, 49 S. E. 623 (1905); *State v. Meyer*, 58 Vt. 453, 3 Atl. 195 (1886); *Burns v. State*, 145 Wis. 373, 128 N. W. 987 (1910); *State v. Toney*, 98 W. Va. 236, 127 S. E. 35 (1925).

since. See *Holt v. United States*, 218 U. S. 245, 54 L. Ed. 1021, 31 S. Ct. 2 (1910), *supra*; *Hoyt v. United States*, 273 F. 792, 799 (C. A. 2d Cir., 1921); *United States v. Titus*, 210 F. 2d 210, 213-214 (C. A. 2d Cir., 1954), *supra*, (dictum); *Merritt v. United States*, 264 Fed. 870, 875-876 (C. A. 9th Cir., 1920) (dictum); *cf. Thiede v. Utah*, 159 U. S. 510, 516, 40 L. Ed. 237, 241, 16 S. Ct. 62 (1895); *Hopt v. Utah*, 120 U. S. 430, 30 L. Ed. 708, 7 S. Ct. 614 (1887); *Dolan v. United States*, 116 Fed. 578, 582 (C. A. 9th Cir., 1902).

The reasons for this rule and the methods of its application are best explained in an often-quoted passage from *Reynolds v. United States*, 98 U. S. 145, 25 L. Ed. 244, 246 (1878), *supra*:

> ". . . The theory of the law is that a juror who has formed an opinion cannot be impartial. Every opinion which he may entertain need not necessarily have that effect. In these days of newspaper enterprise and universal education, every case of public interest is almost, as a matter of necessity, brought to the attention of all the intelligent people in the vicinity, and scarcely any one can be found among those best fitted for jurors who has not read or heard of it, and who has not some impression or some opinion in respect to its merits. It is clear, therefore, that upon the trial of the issue of fact raised by a challenge for such cause the court will practically be called upon to determine whether the nature and strength of the opinion formed are such as in law necessarily to raise the presumption of partiality. The question thus presented is one of mixed law and fact,

> and to be tried, as far as the facts are concerned, like any other issue of that character, upon the evidence. The finding of the trial court upon that issue ought not to be set aside by a reviewing court, unless the error is manifest. No less stringent rules should be applied by the reviewing court in such a case than those which govern in the consideration of motions for new trial because the verdict is against the evidence. It must be made clearly to appear that upon the evidence the court ought to have found the juror had formed such an opinion that he could not in law be deemed impartial. The case must be one in which it is manifest the law left nothing to the 'conscience or discretion' of the court."

See also *Irvin v. Dowd,* 271 F. 2d 552, 554-555 (C. A. 7th Cir., 1959), certiorari granted 4 L. Ed. 2d 542 (1960), *supra.*

Petitioner does not attack the validity of the California statute. This is understandable in light of the cases which have consistently held that such statutes are constitutional. *Ex parte Spies,* 123 U. S. 131, 31 L. Ed. 80, 8 S. Ct. 21 (1887) (upholding the validity of a similar Illinois statute); *Hopt v. Utah,* 120 U. S. 430, 30 L. Ed. 708, 7 S. Ct. 614 (1887), *supra* (upholding a similar statute of the Territory of Utah); *Irvin v. Dowd, supra* (upholding the validity of a similar Indiana statute); *cf. Holt v. United States,* 218 U. S. 245, 54 L. Ed. 1021, 31 S. Ct. 2 (1910), *supra.*

The question then can only be whether the statute has been so misapplied as to give rise to a constitutional claim. The fact that the question was never

raised at the trial in connection with the three jurors here involved makes it virtually impossible to speak in terms of the application of the statute, and thus fortifies the position that the issue is not properly before this court. (See pp. 28-36, *supra.*)

Nevertheless, assuming that a mythical challenge had been made and rejected, the record would clearly support that decision. Each of the jurors in question (Hall, Berch, and Horrell) with commendable candor admitted that he had formed an opinion of the case prior to trial. [Tr. of R. pp. 635, 647, 670.] And each was subject to intensive examination as to his ability to ignore that opinion and decide the case fairly and impartially. In all three cases this examination was conducted by the defense counsel, not by the prosecuting attorney. The results of the examination left no doubt that these three jurors were competent. In clear and unequivocable terms the jurors testified that their opinions would have no effect whatsoever with respect to their decision. (It is of absolutely no consequence when these opinions were formed or how long they were "retained," provided that they did not influence the verdict.) Each of the jurors in question was positive that he could render a fair and impartial decision. Juror Berch, when asked whether or not she herself would be willing to be tried by a jury of persons with her present frame of mind, answered in the affirmative, as did Juror Horrell with respect to a similar question assuming his wife was the defendant. Although Juror Hall was not asked that particular question, her answers to other inquiries were just as convincing.

Petitioner, in her effort to show some error of constitutional proportions, attempts to distinguish among cases in which a prospective juror has only an "impression" and those in which he has an "opinion." Such a distinction is one of mere words and is valid only insofar as it reflects the effect of the "impression" or "opinion" on the mind of the juror. See, *e.g., State v. Hamilton,* 155 La. 1069, 99 So. 874 (1924); *United States v. Titus,* 210 F. 2d 210, 213-214 (C. A. 2d Cir., 1954), *supra* (dictum). In the last analysis, when a juror has stated that he can and will be fair and impartial despite an opinion, only the trial judge can decide whether that juror should be allowed to serve. Short of the most palpable error an appellate court cannot reverse such a determination. *Hopt v. Utah,* 120 U. S. 430, 30 L. Ed. 708, 710, 7 S. Ct. 614 (1887), *supra; Holt v. United States,* 218 U. S. 245, 248, 54 L. Ed. 1021, 1028, 31 S. Ct. 2 (1910), *supra.* Here the trial judge was not even asked by petitioner to make a ruling and the three jurors were thus "permitted to remain" by petitioner herself, not by the judge.

Petitioner, also places emphasis on the fact that the information upon which the jurors based their opinions may have come from discussions with other persons and not solely from newspapers or radio and television broadcasts. The source of information is of importance only to show the strength of the opinion and the effect which it will have on the juror's mind. Petitioner makes much of the fact that the persons with whom the jurors spoke were not shown not to have had personal knowledge of the case. There is not one shred of evidence that would suggest the existence of such personal knowledge, but petitioner alleges that the prosecution has the

burden of demonstrating that there is no prejudice, and, therefore, the conviction must be reversed.

In this regard there can be no question that the requirements of California law were met. As the California Supreme Court stated in *People v. Duncan,* 53 Cal. 2d 803, 815, 350 P. 2d 103, 109-110 (1960), with respect to the four prospective jurors unsuccessfully challenged for cause by petitioner:

> ". . . [Section 1076] was obviously enacted in recognition of the fact that some cases are given widespread publicity in advance of trial and that persons who may be called upon to act as jurors may read or hear what is reported, discuss the subject with others, and even form opinions as to the guilt of the accused. The statements of the four challenged jurors show that their opinions were based upon information obtained from newspapers, radio, or television and upon discussions with various people. There is nothing in the record to suggest that anyone with whom they talked had personal knowledge regarding the case, and their statements indicated they did not understand that these people had such knowledge. The crime was obviously a topic of conversation by the public generally, and such cases are usually discussed upon the basis of news reports and rumor. Only a few people speak from personal knowledge, and, when they do, that fact is almost invariably made clear. The trial court could conclude that the comments made by the persons with whom the four jurors discussed the case were founded on news reports or rumor."

More important, it is clear that the federal constitution places no burden of showing lack of prejudice on the prosecution. Every remote possibility of prejudice cannot be the basis of a reversal; otherwise the reasonable administration of criminal justice would be impossible. As Mr. Justice Holmes, writing for this Court, stated in *Holt v. United States,* 218 U. S. 245, 251, 54 L. Ed. 1021, 1029, 31 S. Ct. 2 (1910), *supra:* "If the mere opportunity for prejudice or corruption is to raise a presumption that they exist, it will be hard to maintain jury trial under the conditions of the present day."

In a more recent case, *United States v. Handy,* 351 U. S. 454, 462, 100 L. Ed. 1331, 1338, 76 S. Ct. 965 (1956), *supra,* this Court stated:

> ". . . While this Court stands ready to correct violations of constitutional rights, it also holds that 'it is not asking too much that the burden of showing essential unfairness be sustained by him who claims such injustice and seeks to have the result set aside, and that it be sustained not as a matter of speculation but as a demonstrable reality.' Adams v. United States ex. rel. McCann, 317 U.S. 269, 281, 63 S. Ct. 236, 87 L. Ed. 268, 276 [143 A. L. R. 435]. . . ."

Even if there were some burden on the prosecution to come forward with proof, that burden would have been satisfied, for each of the three jurors (Berch, Hall and Horrell) specifically testified that, insofar as he knew and believed, the persons with whom he had discussed the case had no personal knowledge of it but were themselves informed only through newspaper

reports or hearsay. [Tr. of R. pp. 635, 646, 669.] Of course the strength of these jurors' opinions and their ability to set them aside depends upon what they thought at the time the opinions were formed, and it is immaterial whether or not the persons with whom the jurors spoke had actual knowledge of the facts of the case. *People v. Potigian,* 69 Cal. App. 257, 261-262, 231 Pac. 593, 594 (1924).

The record speaks for itself: not only did defense counsel fail to challenge the three jurors for cause, but even if he had done so, a decision by the trial judge denying those challenges would have been upheld.

C. The Denial of the Challenges for Cause of Four Prospective Jurors Who Were Later Removed From the Jury Gives Rise to No Constitutional Question.

Respondent contends that any issue concerning prospective jurors who did not hear the case is not properly within the scope of the question as set forth by this court, since that question is limited to the qualifications of three jurors who were "permitted to remain in the box and sit in judgment."

But even if such an issue is to be considered, it affords no basis for reversal. What has been said as to the qualifications of Jurors Berch, Hall and Horrell applies to prospective Jurors Porter, Saavedra, Flynn and Behrens. Each of the latter admitted that he had formed an opinion of the merits of the case prior to trial [Tr. of R. pp. 277, 289, 407, 476], but each stated that his opinion could and would be ignored and that he would render his decision solely on the evidence presented. [Tr. of R. pp. 279, 291, 409, 478.] On the basis of these statements the trial court, under Section

1076, refused to dismiss these prospective jurors for cause. The Supreme Court of California reviewed the record and specifically upheld the rulings of the trial judge.

Petitioner urges that the trial court's decision was erroneous and that as a matter of law Section 1076 could not apply. There is no basis for such a contention. The trial judge was the only one to hear the testimony and evaluate it in light of each prospective juror's demeanor. The palpable error which would have been necessary for reversal by the Supreme Court of California simply was not present. The testimony of prospective juror Joseph T. Porter epitomizes the testimony of the other four jurors who stated they had opinions and who were later challenged for cause by the petitioner through the exercise of peremptory challenges. Porter stated that he had formed an opinion [Tr. of R. p. 277] and that his opinion was unfavorable to the defendant. [Tr. of R. p. 277.] He had read reports of the case in the local and metropolitan press. [Tr. of R. p. 276.] He had read articles which purported to be reports of the testimony of Augustine Baldanado before the grand jury [Tr. of R. p. 276] and of Luis Moya [Tr. of R. p. 276], and an article which purported to be a report of a confession by Luis Moya. [Tr of R. pp. 276-277.] He had heard radio and seen television broadcasts relating to the case. [Tr. of R. p. 277.] He was challenged for cause by the defendant [Tr. of R. p. 278] and that challenge was disallowed. [Tr. of R. p 283.]

In response to questioning on *voir dire* it became evident that, his existing opinion notwithstanding, he

could render a just verdict. The following questions and answers demonstrate this:

> "Mr. Gustafson: So that the opinion you have formed about Mrs. Duncan's guilt from what you have read in the newspapers would not be the governing factor and would not determine your verdict, would it?
>
> The Prospective Juror: No, sir.
>
> Mr. Gustafson: So you would be fair and impartial and would act upon the evidence and on what you heard in court?
>
> The Prospective Juror: Yes, sir."

[Tr. of R. p. 280.] Each of the other three prospective jurors was no less firm in his statements that he could set aside the opinion he had. No abuse of discretion, prejudicial or otherwise, is shown by the record but rather the record contains ample testimony to support the trial court's rulings in this matter, and on review the Supreme Court of California so held. *People v. Duncan*, 53 Cal. 2d 803, 813-816; 350 P. 2d 103, 108-110 (1960).

But assuming *arguendo* that the trial judge was incorrect in his factual determination and the Supreme Court of California was wrong, there is still no basis for reversal by the Supreme Court of the United States. Unless petitioner alleges and demonstrates that the trial judge was biased or incompetent, or that there was no evidence to support his conclusions, or that for some other reason petitioner was deprived of her federal constitutional rights, this Court has no power to reverse the decisions of the California courts. Just as this Court will not second-guess a jury, it will not re-

evaluate a factual determination by a judge, especially when that determination is in large part dependent upon the demeanor of the person who testified. See *Holt v. United States*, 218 U. S. 245, 248, 54 L. Ed. 1021, 1028, 31 S. Ct. 2 (1910), *supra; Hopt v. Utah*, 120 U. S. 430, 30 L. Ed. 708, 710, 7 S. Ct. 614 (1887); *Reynolds v. United States*, 98 U. S. 145, 25 L. Ed. 244 (1878); *supra, Irvin v. Dowd*, 271 F. 2d 552 (C. A. 7th Cir., 1959), certiorari granted 4 L. Ed. 2d 542 (1960), *supra*.

As the court stated in *Buchalter v. People of the State of New York*, 319 U. S. 427, 430-431, 87 L. Ed. 1492, 1496, 63 S. Ct. 1129 (1943):

> "The petitioners assert that, in view of unfair and lurid newspaper publicity, it was impossible to obtain an impartial jury in the county of trial, and that the rulings of the court denying a change of venue, and on challenges to prospective jurors, resulted in the impanelling of a jury affected with bias. We have examined the record and are unable, as the court below was, to conclude that a convincing showing of actual bias on the part of the jury which tried the defendants is established. Though the statute governing the selection of the jurors and the court's rulings on challenges are asserted to have worked injustice in the impanelling of a jury such assertion raises no due process question requiring review by this court.
>
> "The petitioners insist that the rulings upon evidence and instructions to the jury, when taken in their totality, indicate that, whatever the intention of the trial judge, his rulings and attitude precluded a fair consideration of the case. The Court

of Appeals held that certain of the challenged rulings and instructions were erroneous but that the errors were not substantial in the sense that they affected the ability of the jury to render an impartial verdict, and that others of the alleged errors were not such under the law of New York. As already stated, the due process clause of the Fourteenth Amendment does not enable us to review errors of state law however material under that law. We are unable to find that the rulings and instructions under attack constituted more than errors as to state law. We cannot say that they were such as to deprive the petitioners of a trial according to the accepted course of legal proceedings."

There is no valid constitutional challenge in this case, and one cannot be demonstrated. Counsel for petitioner, in arguing his motion for a a new trial, specifically disclaimed any bias or prejudice on the part of the trial judge. [Rep. Tr. p. 93.]

The trial judge showed fully his sensitivity to the problem involved when he allowed the challenge for cause to prospective juror Dodd, after he had denied such challenges to Porter, Saavedra, Flynn and Behrens. [Tr. of R. p. 627; see also Tr. of R. pp. 193-194 with respect to prospective juror Campbell.]

The simple truth is that the jurors who actually heard and decided the case are shown by the record to have been fair, impartial and unchallenged. This is all that the Constitution requires. See *United States v. Wood*, 299 U. S. 123, 145-146, 81 L. Ed. 78, 88, 57 S. Ct. 177 (1936).

Conclusion.

The facts concerning the murder of Olga Duncan were most unusual. It was therefore only natural that the case attracted world-wide attention through news media. The evidence against petitioner at the trial was so strong that petitioner at no time has questioned the sufficiency of the evidence to support the verdicts as to either guilt or penalty.

This Court now asks whether petitioner was deprived of a fair trial. She obviously was not unless the publicity was such that one or more jurors had formed *fixed* opinions on the issues to be tried. The California Supreme Court put the matter succinctly: "Even if it be assumed that many persons formed opinions unfavorable to defendant as a result of what was published, it does not follow that persons without such views could not be found to act as jurors or that those who had adverse opinions would be unable to set them aside and try the case fairly on the basis of the evidence to be produced in court." *People v. Duncan*, 53 Cal. 2d 803, 812, 350 P. 2d 103, 108 (1960).

After examination of the jurors it was clear that there were nine who had formed no adverse opinions and there were three who would be able to set their adverse opinions aside and decide the case solely on the evidence. Petitioner did not challenge a single one of the twelve jurors. Her motion for a change of venue made after the twelve jurors were selected can only be interpreted as a claim that the nine jurors who said they had no opinions actually did have fixed opinions adverse to petitioner and as a claim that the three jurors who said they could and would set aside their opin-

ions actually could not or would not do so. These claims were rejected by the trial judge when he denied her motion. They were rejected by the Supreme Court of California when it upheld the trial judge's ruling.

Respondent respectfully submits that there is nothing in the record which warrants this Court finding that the jurors misstated their attitude and finding that the trial judge and the Supreme Court of California were wrong in believing that all of the jurors could and would fairly and impartially try the case.

Respectfully submitted,

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APPENDIX A.

Attorneys defending the three charged with the murder of Olga Duncan were: for Baldonado, John Danch; for Moya, Burt Henson; for Duncan, S. Ward Sullivan and Frank Duncan (the latter being formally made attorney of record on March 24, 1959). All are attorneys of record on this appeal.

For the convenience of this Court, the publications in this record in which it is reported that statements pertaining to the case were made out of court by attorneys for the defendants are here tabulated:

Date	Newspaper	Page	Exhibit	Attorney Quoted
2-22-1958	Ventura Star-Free Press	A-1	3	Sullivan
22	Los Angeles Times	25	30	Sullivan
22	Los Angeles Herald Express	A-4	10	Sullivan
23	Ventura Star-Free Press	A-1	16	Sullivan
23	Oxnard Press Courier	A-1	25	Sullivan
23	Los Angeles Times	1	31	Sullivan
24	Ventura Star-Free Press	A-1	17	Sullivan
24	Oxnard Press Courier	A-3	4	Sullivan
26	Oxnard Press Courier	A-1	26	Duncan
27	Ventura Star-Free Press	A-1	5	Duncan
27	Oxnard Press Courier	A-1	6	Duncan
27	Los Angeles Times	4	7	Duncan
29	Ventura Star-Free Press	A-1	9	Sullivan
29	Ventura Star-Free Press	A-1	9	Duncan
30	Ventura Star-Free Press	A-1	8	Sullivan
31	Ventura Star-Free Press	A-1	19	Danch
7-1959	Los Angeles Examiner	1	2	Sullivan
12	Ventura Star-Free Press	A-1	S-A p. 1	Duncan

Date	Newspaper	Page	Exhibit	Attorney Quoted
12	Ventura Star-Free Press	A-1, A-4	S-A p. 1	Sullivan
12	Ventura Star-Free Press	A-1	S-A p. 1	Henson
12	Ventura Star-Free Press	A-1	S-A p. 1	Danch
13	Ventura Star-Free Press	A-1	A-1	Sullivan
20	Ventura Star-Free Press	A-1	A-3	Henson
29	Oxnard Press Courier	A-1	S-A p. 1	Henson
29	Oxnard Press Courier	A-1	S-A p. 1	Danch
29	Ventura Star-Free Press	A-1	A-4	Sullivan
29	Ventura Star-Free Press	A-1	A-4	Henson
29	Ventura Star-Free Press	A-1	A-4	Danch
2– 2–1959	Ventura Star-Free Press	B-1	A-6	Sullivan
12	Oxnard Press Courier	A-1	S-A p. 8	Sullivan
12	Oxnard Press Courier	A-1	S-A p. 8	Danch
14	Ventura Star-Free Press	A-1	A-7	Sullivan
16	Ventura Star-Free Press	A-2	A-9	Danch
16	Santa Barbara News Press	A-1	A-63	Duncan
17	Ventura Star-Free Press	A-4	A-11	Sullivan
17	Ventura Star-Free Press	A-1	A-11	Duncan
18	Ventura Star-Free Press	A-1, A-3	A-40	Sullivan
19	Ventura Star-Free Press	B-8	A-12	Sullivan
20	Ventura Star-Free Press	A-1	A-13	Sullivan
21	Ventura Star-Free Press	A-1	A-41	Sullivan
24	Ventura Star-Free Press	B-1	A-14	Sullivan
26	Ventura Star-Free Press	A-16	A-16	Duncan
26	Ventura Star-Free Press	A-1	A-16	Sullivan
26	Santa Barbara News Press	A-1	A-19	Duncan

Date	Newspaper	Page	Exhibit	Attorney Quoted
26	Los Angeles Times	32	A-84	Sullivan
27	Ventura Star-Free Press	A-1	A-43	Duncan
27	Ventura Star-Free Press	A-1	A-43	Sullivan
27	Los Angeles Examiner	1	A-62	Danch
27	Los Angeles Examiner	1	A-62	Duncan
3- 2-1959	Santa Barbara News Press	A-7	A-69	Sullivan
3	Ventura Star-Free Press	A-1	A-46	Sullivan
4	Ventura Star-Free Press	A-1	A-23	Sullivan
6	Santa Barbara News Press	A-8	A-20	Duncan
9	Ventura Star-Free Press	A-1	A-49	Sullivan
9	Oxnard Press Courier	A-1	A-86	Sullivan
9	Santa Barbara News Press	A-1	A-72	Sullivan
11	Los Angeles Examiner	1	A-32	Sullivan
16	Santa Barbara News Press	A-1	A-76	Sullivan
17	Ventura Star-Free Press	A-1, A-7	A-37	Duncan
17	Ventura Star-Free Press	A-1	A-37	Sullivan
21	Ventura Star-Free Press	A-1	A-36	Duncan
21	Ventura Star-Free Press	A-1	A-36	Sullivan
21	Oxnard Press Courier	A-1	A-35	Duncan
21	Oxnard Press Courier	A-1	A-35	Sullivan
21	Santa Barbara News Press	A-6	A-80	Duncan
21	Santa Barbara News Press	A-6	A-80	Sullivan
21	Los Angeles Examiner	1	A-34	Duncan
21	Los Angeles Examiner	16	A-34	Sullivan
24	Ventura Star-Free Press	A-1	A-59	Sullivan

APPENDIX B.

The nature of the reported statements by defense attorneys to newspapers is illustrated by the following excerpts:

"Frank later rapped what he called the political ambitions of the district attorney. 'There was no question that there was political ambition in this,' he said. 'He intends to climb to some higher position over my mother's body.'"

(p. A-1 Ventura Star-Free Press March 21, 1959, Ex. A-36.)

"Frank Duncan was barred yesterday from seeing his mother, Mrs. Elizabeth Duncan, now in county jail awaiting trial. . . .

"Duncan was visibly disappointed and angered by the refusal. He termed it 'extraordinary' and said it was 'uncalled for'. 'There is no justification for it,' he added. 'It smacks of the thumb and the screw—I mean, the rack and the screw.'

"Sullivan told newsmen that the bar to outside visitors would hamper preparation of his case. . . .

"He said he saw the 'handwriting' of District Attorney Roy A. Gustafson behind [Sheriff] Hill's orders yesterday. . . .

"[Duncan] said he had not read anything in any newspaper since last seeing his mother on December 20—six days before she was indicted in the slaying plot . . . to change his opinion of her innocence.

"'Just because she is accused does not mean she is guilty,' he said. . . .

"Sullivan and Duncan also revealed yesterday that shortly after the 31-year old attorney was born, his mother was in a sanitarium."

(p. A-1 Ventura Star-Free Press, January 12, 1959, Sullivan, Ex. A p. 1.)

"Defense Counsel Sullivan reported he was somewhat startled, when going into the jail to visit his client, to hear the jailer call out the name of a prisoner. 'Gustafson,' the jailer called. 'Gustafson, come here.'

"Sullivan stopped and said: 'Would you mind telling me the first name of that fellow?'

"No, it wasn't Roy A."

(p. B-1 Ventura Star-Free Press, February 24, 1959, Ex. A-14.)

"Frank Duncan leveled this blast at Gustafson: 'There is no question but that he intends to climb to some higher political position over the body of my mother! Never, as a lawyer, did I think I would see such hatred, bias and prejudice in any court in the United States.' "

(p. A-6 Santa Barbara News Press, March 31, 1959, Ex. A-80.)

"Her son Frank . . . told the News Press this morning he is sure that the woman charged with killing his young wife is innocent.

" 'After I read the complete Grand Jury transcript,' he said, 'I am fully convinced that my mother is innocent of the charge.' He also said he has 'the greatest concern' that she will not get a fair trial in Ven-

tura County, based on wide publicity given events which have gone before."

(p. A-1 Santa Barbara News Press, February 16, 1959, Ex. A-63.)

"District Attorney Roy Gustafson was accused of 'going a long way' to prejudice any jury that would hear the Duncan murder case.

"The accusation came from Mrs. Elizabeth Duncan's defense attorney, S. Ward Sullivan, who charged that Gustafson's public statements . . . using this case as an argument in favor of capital punishment are a very obvious effort to influence a verdict.

" 'His remarks,' Sullivan said, 'certainly will influence potential jurors in Ventura County. Gustafson is going a long way to see that these defendants do not receive a fair and impartial trial at the hands of an unbiased and unprejudiced jury.' "

(p. A-1 Ventura Star-Free Press, December 30, 1958, Ex. 8.)

"The following statement was handed to reporters by attorney Burt Henson this morning . . . 'One thing that troubles me about this case is the fact that the district attorney appears to be following a course of selective prosecution and selective retribution. It appears as though the district attorney is again deciding who is to be prosecuted and who shall be a target of retribution.' "

(p. A-1 Ventura Star-Free Press, January 29, 1959, Ex. A-4.)

"Mr. Sullivan told the Press Courier just before court convened today that the district attorney has been guil-

ty of prejudicial conduct 'in offering what he knew or should have known was incompetent and irrelevent [*sic*] evidence, entered for the purpose of degrading and debasing my client in the eyes of the jury.'."

(p. A-1 Oxnard Press Courier, March 9, 1959, Ex. A-86.)

"Sullivan who talked for two hours to Mrs. Elizabeth Ann Duncan, 54, today, said tonight:

" 'I firmly belief that these two men maintained a bitter grudge toward the Duncan family and they resorted to murder in an attempt to blackmail this poor woman.' "

(p. 1 Los Angeles Times, December 23, 1958, Ex. 31.)

"Sullivan emerged from an hour and a half conference with Mrs. Duncan this afternoon to announce that he is convinced she is not guilty and that he will so plead her.

"He said he is convinced she had nothing to do with her daughter-in-law's disappearance and demise, but that he forsees [*sic*] a long trial, possibly two or three weeks."

(p. A-4 Los Angeles Herald Express, December 22, 1958, Ex. 10.)

"Duncan said . . . 'It's inconceivable that mother could associate with a man like that. It sounded like something that might be done in Chicago—not in Santa Barbara.

" 'What a cold-blooded man (Moya). I'd like to lay my hands on that————————————.' "

(p. 1 Los Angeles Examiner, February 27, 1959, Ex. A-62.)

"Sullivan said it appeared to him that Gustafson had done 'a good job in educating the people of Ventura County on his views of capital punishment.'"

(p. A-1 Ventura Star-Free Press, February 18, 1959, Ex. A-40.)

"Said Sullivan: 'This is the clearest case of a miscarriage of justice that I have ever tried in my more than 30 years as a trial lawyer. There is more glaring error in this record than in any case I have ever tried.' . . .

"Of his client he said, 'I don't think she comprehends what happened. All she knows is that she was tried before a biased and prejudicial jury.'"

(p. A-1 Ventura Star-Free Press, March 21, 1959, Ex. A-36.)

"Frank Duncan said he had been reared very carefully by his mother. 'She taught me always to stick up for the under dog, not to hurt anyone, particularly the helpless. She was a very sensitive person—she couldn't stand to see a chicken killed,' he said."

(p. A-1 Ventura Star-Free Press, December 27, 1958, Ex. 5.)

"S. Sullivan, prominent Los Angeles attorney, disclosed that Mrs. Duncan's defense will probably be that she was being blackmailed by Baldonado and Moya."

(p. A-1 Oxnard Press Courier, December 23, 1958, Ex. 25.)

"S. Ward Sullivan, Mrs. Duncan's attorney, said he would 'just as soon' have both Baldonado and Moya plead guilty.

" 'We would prefer to go to trial without those two,' Sullivan said."

(p. A-1 Ventura Star-Free Press, January 29, 1959, Ex. A-4.)

"Frank Duncan had bitter comments after court about Moya's conversion. 'He claims to have religion now, yet he told about killing my wife with no more emotion than if he were ordering his lunch,' Frank said.

"He had said earlier it was inconceivable his mother could associate with a man like that."

(p. A-1 Ventura Star-Free Press, February 27, 1959, Ex. A-43.)

"Sullivan said he regards the Duncan case as one of the most interesting he has handled.

"He said his client has consistently stated to him that she is innocent. The main difficulty from a defense standpoint that he sees right now is in impaneling an impartial jury to try her.

"He feels statements by the District Attorney have seriously prejudiced the average Ventura County citizen against Mrs. Duncan."

(p. B-1 Ventura Star-Free Press, February 2, 1959, Ex. A-6.)

"Young Duncan greeted his mother again in the courtroom and took the opportunity to make several statements to the press. He said for one thing his mother, and other women prisoners in the county jail, are not allowed to read Ventura County newspapers on the belief they would obtain information concerning developments in cases in which they are involved.

"He also branded as 'hogwash' reports that his mother is accumulating a cache of sleeping pills and other drugs in her jail cell as a possible suicide preparation in case the murder trial goes against her."

(p. A-1 Ventura Star-Free Press, February 17, 1959, Ex. A-11.)

"Frank Duncan told reporters after the session that he did not learn of the phony annulment until many weeks after it was granted."

(p. A-16 Ventura Star-Free Press, February 26, 1959, Ex. A-16.)

"S. Ward Sullivan, veteran criminal lawyer, said today he will enter a plea of 'not guilty' for Mrs. Elizabeth Duncan . . . 'She denies having any part of the killing of Olga Duncan,' Sullivan said.

"He said she admitted having met both Augustine Baldonado and Luis Moya who are believed to have committed the actual killing. . . .

"Sullivan said that 'she feels someone else is trying to involve her in the murder.' . . .

"Asked what the feeling was between the two women, the son's wife and the mother-in-law, Sullivan said that there was no indication of hatred on the part of Mrs. Duncan. 'She has told me however, that there was no love lost between them."

(p. A-1 Ventura Star-Free Press, December 22, 1958, Ex. 3.)

"The Los Angeles attorney said there are a great number of facts in the matter which have not as yet been presented and which he feels will place a new light on the whole proceedings. . . .

"Sullivan said his client is maintaining a calm attitude outwardly but that she has obviously been hard-hit by the aspects of the charges against her. 'She has lost 12 pounds since being placed in custody.' Sullivan said. 'She would, of course, rather be spending her holiday season with her son and friends than in jail.'"

(p. A-1 Ventura Star-Free Press, December 24, 1958, Ex. 17.)

"Sullivan has told reporters one of his arguments will be that all of the testimony against Mrs. Duncan is from people who were admitted accomplices in the crime of murder, and that the law requires independent, corroborative evidence from people who were not directly involved."

(p. A-1 Ventura Star-Free Press, February 27, 1959, Ex. A-43.)

"Sullivan contends all who have testified to details of the alleged murder scheme up to now have branded themselves accomplices by their own testimony."

(p. A-1 Ventura Star-Free Press, March 3, 1959, Ex. A-46.)

"Earlier, Mrs. Duncan's attorney, S. Ward Sullivan, said he will demand a mistrial in the four-week-old trial, citing what he called 'misconduct of the district attorney.' . . . '[H]e knows the jury cannot exclude these matters from their minds,' Sullivan said."

(p. A-1 Ventura Star-Free Press, March 9, 1959, Ex. A-49.)

"Young Duncan refused to say what he thought about his mother's involvement. . . .

" 'My mother would have to be insane to be linked into this . . .' he said."

(p. A-1 Oxnard Press-Courier, December 26, 1958, Ex. 26.)

"Sullivan said later he had talked to her [Mrs. Duncan] about the verdict. . . .

" 'She isn't surprised at the verdict,' he said, 'because she realizes she had to go to trial before a jury that was already biased and prejudiced, and she couldn't expect anything else from the outset of the trial.' "

(p. A-6 Santa Barbara News Press, March 21, 1959, Ex. A-80.)

"John Danch, Ventura attorney for Baldonado, said he expects the trial to take at least two weeks. He hopes the three defendants will be tried together, but anticipates Mrs. Elizabeth Duncan's attorney, S. Ward Sullivan, may seek a separate trial for his client.

"Danch says he feels it may be difficult to obtain an impartial jury in Ventura County."

(p. A-1 Ventura Star-Free Press, December 31, 1958, Ex. 19.)

"Sullivan said today Mrs. Duncan definitely will take the stand to testify in her own behalf, when the defense presents its case. Under the law, she cannot be required to do so."

(p. A-1 Ventura Star-Free Press, February 26, 1959, Ex. A-16.)

"Baldonado's attorney, John Danch, Ventura, said he plans to advise the former Camarillo resident against making any admissions in the Duncan trial starting today."

(p. A-2 Ventura Star-Free Press, February 16, 1959, Ex. A-9.)

ILE COPY

PETITION NOT PRINTED

Office-Supreme Court, U.S.
FILED
MAY 5 1961
JAMES R. BROWNING, Clerk

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 187

ELIZABETH ANN DUNCAN,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

PETITIONER'S CLOSING BRIEF

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PETITIONER'S CLOSING BRIEF

I.

Petitioner's Right to a Fair Trial as Guaranteed by the Due Process Clause of the XIV Amendment Was Denied by the Manner in Which the Constituency of the Jury Was Established.

In petitioner's opening brief, supplemented by argument herein, among other things, she demonstrates and argues in substance as follows:

1. Jurors Porter, Behrens, Saavedra and Flynn entered the box with opinions that petitioner was guilty.

2. On initial examination by petitioner's attorney, such opinions were reiterated; and these jurors indicated their inability to judge impartially.

3. On examination by the District Attorney, slight vacillations were secured by a technique described in petitioner's opening brief.

4. At the conclusion of their "examination" by the District Attorney, the slight vacillations ceased, and the pendulum came to a rest pointing in the same direction that it pointed when the vacillations commenced.

5. With respect to these four jurors, the State action was not within the framework of the California Statutes or procedure, and these jurors could not be "rehabilitated".

6. Regardless of that, such action was not within the purview of the federal criteria, and for that reason, these jurors could not be "rehabilitated".

7. Petitioner was required to utilize four of her peremptory challenges to rid the box of those jurors, who should have been excused for cause.

8. In effect, the trial court reduced the number of peremptory challenges granted by statute, and denied petitioner the equal protection of the laws.

9. Thereafter, jurors Hall, Berch and Horrell entered the box with biased opinions.

10. Historically, jurors entering the box with an opinion as to defendant's guilt were *ipso facto* disqualified; and no "rehabilitation" was permitted.

11. Even if these three jurors were in the area permitting their "rehabilitation", contemplating their *voir dire* examination in its entirety, their "rehabilitation" was illusory.

12. Regardless of whether or not such "rehabilitation" was illusory, or whether or not Jurors Hall, Berch and Horrell were in the area permitting their "rehabilitation", the presence of these jurors in the box was obnoxious to petitioner, and she was frustrated from ridding the box of these jurors because she was improperly deprived of four peremptory challenges by the trial court in its treatment of prospective jurors Porter, Behrens, Saavedra and Flynn.

13. Historically, this Court has supervised the findings as to the qualifications of jurors as it affects due process.

14. Historically, this Court has held to a minimum any "departure" from the rule that a juror entering the box with an opinion was *ipso facto* disqualified.

15. Herein, the departure was more than minimal, and the approval of a jury of the type described in a capital case would be an anomaly in Anglo-Saxon jurisprudence.

A. The Question as to the Bias of the Three Jurors Was Raised Below and Properly Is Before This Court.

In urging the negative of the above statement, respondent states as follows (Resp. Br. p. 28):

> "Now, for the first time petitioner wishes to challenge these jurors for bias on the basis of the answers which were made on voir dire. The issue was not even presented to the Supreme Court of California, for there the only questions as to the qualifications of prospective

jurors were in regard to four individuals who in fact did not hear the case . . . "

Respondent is in abject error.

Beginning on page 15 and ending on page 19 of her reply brief filed in the California Supreme Court, petitioner delineated the *voir dire* examination of Jurors Hall, Berch and Horrell, the utilization of petitioner's last peremptory challenge to excuse Juror York, her inability to deal with the three prejudiced jurors in question, and her dissatisfaction with these three jurors.

Consequently, much of respondent's argument under this point is irrelevant.

Respondent argues further in substance that petitioner's counsel was obviously satisfied with the jury because he failed to challenge the three disputed jurors; and that an objection to jurors must be made *in limine*.

In effect, respondent urges that in order to protect the record petitioner should have ritualistically challenged the jurors for cause.

Petitioner systematically challenged for cause those jurors who had entered the box with an adverse opinion, and who purportedly had been "rehabilitated" by the district attorney under Section 1076 of the California Penal Code.

The trial court systematically overruled such challenges for cause.

Jurors Hall, Berch and Horrell, with minor variations, had reiterated the answers furnished by the prior jurors whom petitioner had vainly challenged for cause.

Respondent would require petitioner, in the presence of these jurors, to make the accusation that they were preju-

diced and unfit to serve; and to make such accusation without the power to excuse these jurors peremptorily in the event of an adverse ruling, petitioner's peremptory challenges having already been exhausted.

No attorney worth his salt would subject his client to the risk of alienating jurors who already had expressed an opinion adverse to his client; and no court would require an attorney to so do.

One may infer that respondent concedes that challenges for cause to jurors Hall, Berch and Horrell would have been futile; or, at least, one may infer that respondent's denial of such futility is made with tongue in cheek.

Respondent then states that such futility has no basis in fact because the trial judge "did uphold numerous challenges for cause made by petitioner's attorney."

To justify this statement respondent lists the names of 18 prospective jurors dismissed upon petitioner's challenges.

Analysis of the record shows that with respect to a great number of these 18 prospective jurors excused by the trial court after they were challenged for cause, not even token compliance with the "rehabilitation" statute was effectuated. Additionally, of these 18 excuses one (Boynton), was excused, not for cause, but because he had to smudge oranges (Tr. of R. p. 227) and only one of the remaining 17 (Campbell Tr. of R. p. 194) was excused over the objection of respondent.

In not one of these 18 challenges for cause upheld by the trial court is there any rational basis for anticipation that the trial court would sustain a challenge to any of the three disputed jurors.

Calling from the list of 18, respondent then sets forth as a classic example, the *voir dire* examination of prospective juror Dodds. The respondent states as follows:

> "The Court's ruling as to prospective juror Dodds is of particular interest. The latter admitted on voir dire that she had formed an opinion of the merits of the case prior to trial. . . . However, she went on to testify that she could set aside her opinion and render a verdict solely on the evidence to be presented and in accordance with instructions from the Court . . . Nevertheless, the Court upheld a challenge for cause by defense counsel. . . . It is important to note that this occurred *after* the denial of the challenge for cause to prospective jurors Porter, Saavedra, Flynn and Behrens but *prior* to the examination of jurors Hall, Berch and Horrell. In view of this, it can hardly be claimed that challenges to the latter three would necessarily have been in vain. . . . "

Respondent's epitome is incomplete and misleading. Actually, the record indicates that with respect to prospective juror Dodds, there is less basis for anticipation that the trial court would sustain a challenge to any of the three disputed jurors than existed with respect to the other 17 prospective jurors.

During her examination prospective juror Dodds stated that she believed the defendant to be guilty, and that she would require evidence to remove that opinion. The examination *concluded* as follows (R. 627):

> The Court: You don't mean to say that you would require the defendant to prove anything, do you? The defendant is not required to prove anything under the law.

The Prospective Juror: I realize that, Judge Blackstock, yes.

The Court: But you said ago (sic) that you would need some testimony from the defendant.

Mr. Gustafson: Your Honor, the question she answered was that she would need some evidence to remove her opinion.

The Prospective Juror: Opinion.

The Court: But she indicated at one time that she would require some evidence from the defendant to remove that opinion. Didn't you (sic)?

The Prospective Juror: That's right, I said that.

The Court: You did that, didn't you?

The Prospective Juror: I said that.

The Court: You still feel that way?

The Prospective Juror: Yes, sir.

Consequently, it appears that at the conclusion of the *voir dire* examination of prospective juror Dodds, she maintained a stubborn prejudice against petitioner that inhibited her from accepting any hypothesis which included a presumption of petitioner's innocence; and that her adamance was such that she unalterably placed upon petitioner the burden to produce testimony overcoming the presumption of guilt.

Prospective juror Dodds' incompetency to serve is apparent even to those afflicted with legal myopia.

Immediately upon the termination of the *voir dire* examination of prospective juror Dodds, the trial court then stated as follows:

The Court: This is the last challenge. If he had to use a challenge on this juror, it would be his last challenge. I think I will allow this challenge.

It is observed that the trial court disqualified prospective juror Dodds not because of her abject inability to accord petitioner the presumption of innocence, and her unalterable position in requiring petitioner to produce evidence to prove her innocence, but disqualified her only because "it would be his last challenge" ("his" referring to petitioner's attorney).

The spontaneous articulation by the trial court may have revealed subconscious expiation for the prior rulings on challenges for cause interposed by petitioner.

B. The Jurors Who Actually Tried the Case Were Partial and Biased.

In urging the negative of the above statement, the respondent states as follows (Resp. Br. p. 38):

> "Petitioner does not attack the validity of the California statute. This is understandable in light of the cases which have consistently held that such statutes are constitutional. *Ex parte Spies*, 123 U.S. 131 . . . (upholding the validity of a similar Illinois statute); *Hopt* v. *Utah*, 120 U.S. 430 . . . (upholding a similar statute of the Territory of Utah); *Irvin* v. *Dowd*, supra, (upholding the validity of a similar Indiana statute); . . . *Holt* v. *United States*, 218 U. S. 245 . . . ".

Although the above statement is immaterial in view of petitioner's position, nevertheless, petitioner is impelled to expose the inaccuracy of such statement.

In *Hopt, supra*, no argument was offered with respect to the constitutionality of the Utah statute, and not one line of the Court's opinion is devoted to that issue. Apparently, respondent's attorney did not read the opinion before presenting it to this court for consideration.

In *Holt, supra,* no argument was offered with respect to the constitutionality of the statute involved, and not one line of the Court's opinion is devoted to that issue. Apparently, respondent's attorney did not read this opinion either, before presenting it to this Court for consideration.

Irvin, supra, apparently is before this Court and has not been decided.

In *Spies, supra,* the opinion consists of 16 lines. The only issue discussed was a matter of procedure, to wit, the propriety of moving in open Court for a writ of error. Apparently respondent's attorney intended to cite another *Ex parte Spies,* following *Spies, supra.* In that case, appellants urged the invalidity of the Illinois "rehabilitation" statute. No serious constitutional argument is delineated either for or against its validity. As far as petitioner's attorney can comprehend, after several readings, the Court took the position that:

1. The Illinois statute was similar to other statutes.

2. On a prior occasion with respect to a similar statute another appellant did not suggest a doubt of its invalidity.

3. Several state courts have upheld the validity of their own statutes.

Then the Court stated as follows:

> "Without pursuing this subject further, it is sufficient to say that we agree entirely with the Supreme Court of Illinois in its opinion in this case that the statute on its face, as construed by the trial court, is not repugnant to section 9 of Article 2 of the constitution of that state . . . "

Spies, supra, was decided in 1887.

C. The Denial of the Challenges for Cause of Four Prospective Jurors Who Were Later Removed Gives Rise to a Constitutional Question.

Jurors Porter, Behrens, Saavedra and Flynn were clearly subject to challenge for cause. They had entered the box with opinions of guilt; maintained their opinions during examination by the District Attorney (with the exception of a few vacillations produced by the District Attorney's technique) and indicated their unwillingness to be judged by jurors in their frame of mind.

"Rehabilitation" of these prospective jurors was not within the jurisdiction of the trial court, either under the criteria in the federal jurisdiction, or under Section 1076 of the California Penal Code, because their opinions were either in part or entirely based upon information obtained from specific persons, and not exclusively from general circulating reading material or common rumor.

Under Section 1070 of the California Penal Code, petitioner and respondent were entitled to 20 peremptory challenges.

By improperly overruling four of petitioner's challenges for cause and requiring her to utilize four of her peremptory challenges to rid the jury box of four prejudiced jurors, the California courts limited the petitioner to 16 peremptory challenges in derogation of the number granted to her by the California Legislature. Under this hypothesis, petitioner was denied the equal protection of the laws.

If the California Legislature had established a disproportionate number of peremptory challenges in favor of the prosecution, it would have invited attack upon the validity of such legislation on the ground of denial of due process.

Court action effectuating the same objective is no less amenable to the same kind of attack.

Jurors Hall, Berch and Horrell entered the box with an opinion as to petitioner's guilt. In the absence of a "rehabilitation" statute they were *ipso facto* disqualified. *Arguendo,* if these jurors were in the area permitting "rehabilitation", nevertheless, prejudice occurred when petitioner was unable to challenge peremptorily these jurors because of the improper deprivation of the four peremptory challenges.

A prospective juror may declare his willingness and ability to lay aside his admitted prejudice, and to decide issues fairly in accordance with the instructions of the trial court. The juror may make this declaration with great sincerity. Nevertheless, subtle psychological factors, unrecognized by the declarant, may render the declaration illusory. Ostensibly in the limbo, nevertheless, such prejudice still may exist. As a protection from the impact of such prejudice a litigant is afforded the right of peremptory challenge, to be exercised by him as he sees fit, without harassment by the Court. This right is a substantial one and is part of due process.

In *Hayes* v. *State of Missouri,* 120 U.S. 68, 7 S. Ct. 350, this Court stated as follows:

> "The Constitution . . . guarantees to all persons accused . . . the right to a trial by an impartial jury . . . and this implies that the jurors shall be free from all bias for or against the accused . . . Experience has shown that one of the most effective means to free the jury box from men unfit to be there is the exercise of the peremptory challenge. The public prosecutor may have the strongest reasons to distrust the character of a juror offered, from his habits and associations, and yet

find it difficult to formulate and sustain a legal objection to him. In such cases, the peremptory challenge is a protection . . . "

Depriving petitioner of the right to peremptorily challenge juror Hall was especially poignant. Her father and sister were police officers in California. Her dear friend, a sorority sister, had been murdered shortly before petitioner's trial. She had read the District Attorney's prejudicial press releases which helped formulate her opinion that petitioner was guilty. With respect to prejudice juror Hall was more than suspect. To expect her to completely be devoid of subconscious feelings against petitioner would impute to her unhuman qualities.

In *State* v. *Joiner*, 112 So. 503, 163 La. 609, a juror had discussed the facts of an impending criminal trial with a close friend of his. The close friend became a prosecution witness. During the *voir dire* examination the juror frankly admitted his prior discussion, but averred his willingness and ability to try the case fairly and impartially. Upon this declaration the trial court permitted the juror to serve. The appellate court reversed a conviction, and with respect to the purported rehabilitation of the juror stated as follows:

" . . . he testified, under questioning of the district attorney and the . . . judge, that he could disregard all personal views . . . and give the defendant a fair and impartial trial.

"These declarations of the juror, however, must be tested, like all other human testimony, according to the common knowledge, experience and observation of mankind.

"It is the natural impulse of all men, with rare exceptions, when the direct question is put to them, es-

pecially by one in authority, such as a district attorney or a trial judge, to declare that they believe they can disregard a preconceived opinion and render a fair and impartial verdict . . . In general, they are sincere . . . The declaration, however, should not only proceed from the venireman, but it should be made in connection with a state of facts showing that it is probably true.

"The belief which the juror expressed, upon his examination by the District Attorney and the Court, that he could render an impartial verdict . . . does not alter the situation. One may believe an untruth of himself as well as of another. A person governed by prejudice is usually unaware of its existence . . . "

In *Joiner, supra*, the juror was less suspect than Juror Hall herein.

In *Wright* v. *Bernstein*, 129 Atl. Rep. 2d 19, the New Jersey Appellate Court stated as follows:

"The fundamental right of a trial by a fair and impartial jury is jealously guarded by the courts. The jury is an integral part of the court for the administration of justice . . . "

" . . . *The denial of the right of peremptory challenge is the denial of a substantial right* . . . it is prejudicial per se and harmful, and a party is not required to make an affirmative showing that the denial of his right to peremptory challenge had resulted in prejudice . . . " (emphasis furnished).

Conclusion

Juror Hall entered the box with an opinion as to petitioner's guilt. Her father and sister were police officers in California. Shortly before petitioner's trial, her dear friend, a sorority sister, was murdered. She had read the District Attorney's prejudicial press releases, which helped shape her opinion that petitioner was guilty.

Juror Horrell's father had been a deputy sheriff of Ventura County. He also had read the prejudicial newspaper articles relating to the Grand Jury testimony, and that he believed petitioner to be guilty.

Juror Berch entered the box with an opinion that petitioner was guilty and maintained that opinion.

These jurors were *ipso facto* disqualified from sitting in a capital case.

And if they were not *ipso facto* disqualified, considering the psychological factors, particularly with respect to Juror Hall, the finding of the trial court that these jurors would and could act impartially despite their admitted prejudice constituted an abuse of discretion.

And if the finding of the trial court did not constitute an abuse of discretion, the presence of these jurors was obnoxious to petitioner, and petitioner should have had available the peremptory right to challenge them.

Petitioner was deprived of such right in a manner violating her right to the equal protection of the laws. This resulted in a denial of due process.

Respectfully submitted,

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IN THE

Office Supreme Court, U.S.
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JAMES R. BROWNING, Clerk

Supreme Court of the United States

OCTOBER TERM, 1960.
No. 187

ELIZABETH ANN DUNCAN,
Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Respondent.

Motion for Leave to File Brief Amicus Curiae and Brief Amicus Curiae

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 187

ELIZABETH ANN DUNCAN,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE.

To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The National Lawyers Guild, Los Angeles-Hollywood-Beverly Hills Chapters, respectfully move this Honorable Court for leave to file a brief *amicus curiae* in this case.

The National Lawyers Guild is a national bar association with local chapters, including the Los Angeles-Hollywood-Beverly Hills Chapters, which is concerned with the promotion of justice in the administration of the law and has a special interest in maintaining the

standards of conduct of members of the bar. It is particularly concerned that no unfair action of a member of the bar in his capacity as a prosecuting officer deprive any accused of a trial essentially fair before a tribunal essentially impartial.

Petitioner here appears to have been deprived of a fair trial before an impartial tribunal by publicity statements and releases of a highly inflammatory and biased nature made by the District Attorney of the County in which she was to be tried. The impact of these statements and releases which were carried widely in the press of the County was shown by the *voir dire* of the jury. Instead of a trial before a jury whose minds were open, petitioner was tried by a jury whose attitudes had been bent against her, who were unable to indulge the presumption of innocence and who admittedly would not have wanted their loved ones tried on similar charges before jurors of the same frame of mind.

Without debating the merits of the British *vis-a-vis* the American systems in balancing the right to a free press against the right of an accused to a fair trial, as respects the right of the press to comment on pending litigation, it is evident that the *prosecutor* should not be permitted to use the press for purposes of depriving the accused of a fair trial. Without debating what measures might be taken against a member of the bar who as a prosecutor uses his public office and prestige to prevent the accused from being accorded due process.

it is evident that the right of the accused to a trial which in its essence comports with due process is paramount. Where the prosecutor has so vitriolically compaigned against the accused in pre-trial press releases that a fair trial is improbable, this paramount right demands that the state, the prosecutor's employer, take measures to revitalize the fairness and impartiality of the proceedings.

An examination of the briefs and petitions heretofore filed in this case does not indicate that this question of public importance has been adequately covered by the parties. The National Lawyers Guild, Los Angeles-Hollywood-Beverly Hills Chapters, therefore, asks leave to file the brief herein *amicus curiae*. We are gravely concerned with the issues involved because the maintenance of the meaning and vitality of this very fundamental principle of due process in criminal proceedings is a problem which extends beyond the borders of California and affects the rights of all the criminally accused before all state courts and the federal courts as well.

The National Lawyers Guild as *amicus curiae* has previously filed a brief *amicus curiae* in *Konigsberg v. The State Bar of California and the Committee of Bar Examiners of the State Bar of California*, October Term 1960, No. 28, and *Anastaplo v. The Board of Bar Examiners of the State of Illinois*, October Term 1960, No. 58.

The petitioner has consented to the filing of this brief. The respondent has refused to consent.

Respectfully submitted,

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IN THE

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October Term, 1960.
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ELIZABETH ANN DUNCAN,
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THE PEOPLE OF THE STATE OF CALIFORNIA,
Respondent.

Brief of the Los Angeles-Hollywood-Beverly Hills Chapters of the National Lawyers Guild (Amicus Curiae on Behalf of Petitioner).

Introduction.

The National Lawyers Guild is a national bar association with local chapters including the Los Angeles-Hollywood-Beverly Hills Chapters, among whose fundamental precepts is the preservation of constitutional liberties and the maintenance and strengthening of elemental concepts of justice and fairness. As an association of lawyers, we are vitally concerned with the professional conduct of members of the bar and the standards by which that conduct must be measured; we are concerned as we must be that all fundamental safeguards of constitutional right and fairness be accorded every citizen, no matter how barbaric the crime charged nor how clear the proof in any given case.

We share with all civilized persons a revulsion at the barbarous brutality of the crime involved in the case under review. We cannot and do not comment upon the quantum or strength of the proof of guilt adduced against petitioner. Our concern is not with her guilt or innocence. It is simply that that guilt or innocence be adjudged only by an impartial tribunal, unsullied by mass passions or public hysteria.

The record at bar makes clear that before petitioner was tried, the District Attorney of Ventura County made numerous inflammatory statements against her to the newspapers, radio, television and the public, which not only declared petitioner's guilt but attempted to prescribe the punishment which should be visited upon her. The *voir dire* of the jury panel abundantly disclosed that the statements reached their mark and that at the time of petitioner's trial it was impossible to find in Ventura County an impartial jury to try her. Timely motions for change of venue were made and repeated but in each instance were denied.

In this setting we are impelled to the conclusion that denial of a change of venue obliterated the possibility of attaining that fair play and fundamental justice which are ingrained in our system of jurisprudence.

To allow the guilt of even the most apparent and abhorrent criminal to be adjudged by a jury whose minds have been closed against the accused before the trial by conduct of the District Attorney is to threaten the shelter of due process which may be erected around the less obvious guilty, and indeed the innocent. Moreover, guilt which is apparent by the half-light of inflamed prejudice may be revealed as unreal in the stead-

ier illumination of the calm and dispassionate judical process.

The public and social importance to our "scheme of ordered liberty" (*Palko v. Connecticut*, 302 U. S. 319, 325) that ". . . no man's life, liberty or property be forfeited as criminal punishment . . . until there had been a charge fairly made and fairly tried in a public tribunal free of prejudice, passion, excitement and tyrannical power" (*Chambers v. Florida*, 309 U. S. 227, 236-237), compels us to urge our views. The refusal of the trial court to change venue, despite the atmosphere prejudicial to the accused created by the remarks of the District Attorney prior to both indictment and trial, flouts "the basic principle that all people must stand on an equality before the bar of justice in every American Court." (*Chambers v. Florida, supra* at 241.)

I.

The Fundamental Safeguards of Due Process Rest Upon Broad Grounds of Fair Play. They Are Not to Be Narrowed by Technical Interpretation, nor to Be Sacrificed to Expediency.

It is now beyond argument that it is not sufficient compliance with due process that the laws of a state prescribe rules of just trials or that a particular criminal trial follow prescribed forms. It is further required that this court inquire whether in a particular prosecution the forms of justice have been distorted to accomplish what is in fact a denial of fundamental right. *Moore v. Dempsey*, 261 U. S. 86; see *Monroe v. Pape*, ... U. S. ....., 81 S. Ct. 473, 476-482.

In this prosecution we submit that the trial court's refusal to change venue in the light of the temper of

the community, as reflected in the statements of the jurors of record, offends a "principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental". *Snyder v. Massachusetts*, 291 U. S. 97, 105. That principle of justice is no more than that the accused might be judged in a trial which in its essence is inherently fair. It not only proscribes but discards the conviction of an accused "whose trial is offensive to the common and fundamental ideas of fairness and right." *Betts v. Brady*, 316 U. S. 455, 473. It disavows satisfaction with expediency or technical conformity to empty forms. It seeks to preserve those principles ". . . so fundamental as to be inherent in every concept of a fair trial". *Snyder v. Massachusetts, supra* at 122. Were ease of obtaining a conviction the motivating force in our system of justice, this court need never have declared that the principles of fair play would be "kept inviolate and inviolable, however crushing may be the pressure of incriminating proof." *Id.*

It is commonplace that society must be protected against the anti-social conduct of individuals and that this protection is the function of the criminal law. It is just as true, however, that convictions based upon trials "repugnant to the conscience of mankind" *(Palko v. Connecticut, supra* at 323), are more destructive than crime itself of the basic notions of our society and that, therefore, the principles of decency and fairness in judicial proceedings have traditionally in our history taken precedence over expediency in obtaining convictions, irrespective of the crime charged.

These deep-going principles have been understood to mean that the government may not use its power to

choose a "tribunal favorable to it" (*United States v. Johnson*, 323 U. S. 273, 275; compare *Travis v. United States*, ... U. S. ....., 81 S. Ct. 352, 360), in order to obtain a conviction. The force of these doctrines is increasingly clear in a case where, as in this one, the tribunal was made hospitable to the attitude of guilt finding by the acts and statements of the prosecuting officer himself. The contrary position would render nugatory this court's repeated pronouncements that the interest of the government in a criminal case is not that it shall win a conviction but that justice shall be done. (*Berger v. United States*, 295 U. S. 78, 88; *Jencks v. United States*, 353 U. S. 657, 668; *Campbell v. United States*, ... U. S. ....., ..., 81 S. Ct. 421, 427.)

II.

Where the Prosecuting Officer, by Public Acts and Statements, Corrupts the Impartiality of the Population From Which the Jury Must Be Drawn, Due Process Demands That Upon Request Seasonably Made the Venue of the Trial Be Changed to a Place Which Can Afford the Accused a Fair Trial.

It has become almost axiomatic that the public prosecutor in the American system of law occupies an anomalous position in the trial of a criminal case. "He is both an advocate, determined to convict the defendant, and a representative of the state, safe-guarding the rights of all, including the defendant." (*United States v. Rosenberg*, 344 U. S. 838.) It is as much his duty to see that the accused is not deprived of any of his rights as it is to prosecute. He may strike hard blows but he is not at liberty to strike foul ones, or to use

improper methods. *(Berger v. United States, supra.)* What appears with clarity and force is that in his representation of *all* of the people of his jurisdiction, including the accused, the prosecutor owes a duty to act for the benefit of the public and that while the procurement of a conviction for crime may benefit the public, procurement of a conviction by unfair and improper means does not.

It is not our purpose to speculate as to the motives which prompted the prosecutor herein to pre-try his case in the press. Whether his acts were prompted by a passionate disgust for the crime of which he believed the accused guilty, by a hunger for publicity for personal or political reasons, by a desire to rebut a burgeoning movement in California for the abolition of capital punishment or by some other motive is of no moment. Nor is it our purpose to propose devices for the censure of the too-zealous prosecutor.

We do urge that from the prosecutor's sowing of the seeds of hatred for the accused blooms a fruit which must be harvested by the public whom he represents.

We believe it clearly demonstrated that the effect of the prosecutor's statements was to prejudice the overwhelming number of persons available to serve as jurors in this case. Certainly his inflammatory remarks were calculated to and did in fact at the minimum create an unwholesome atmosphere in which a fair trial was improbable. This conclusion is particularly forceful in a capital case where the jury not only must determine the guilt or innocence of the accused but must also determine whether the defendant shall be imprisoned or executed.

What then are the alternatives? Two choices immediately suggest themselves as reasonable in securing a fair and impartial trial for the accused without doing violence to the administration of the criminal law: continuance or change of venue.

But the principles underlying either method of safeguarding the right to trial before an impartial tribunal would seem the same.

In *Stroble v. California* (343 U. S. 181), a conviction was affirmed although the petitioner urged before this court that he had been prejudiced by the prosecution's publicity. However, the facts upon which the affirmance turned were that change of venue had not been seasonably demanded and petitioner there had made no showing that the publicity had prejudiced the jury; and the implication of the opinion seems clear that where a similar fact situation exists and the prejudice is shown, upon demand seasonably made, change of venue should be granted. This brings us to the *Duncan* case. Here, where the accused made several timely requests, there would appear no reason why the entire court should not join with the principles enunciated by Mr. Justice Frankfurter, dissenting in the *Stroble* case:

> ". . . [I]f guilt here is clear the dignity of the law would be enhanced by establishing that guilt wholly through the processes of law, unaided by the infusion of extraneous passion. The moral health of the community is strengthened by according even the most miserable and pathetic criminal those rights which the Constitution has designed for all." (343 U. S. at 202.)

In *United States v. Montgomery* (42 F. 2d 254), the court stated:

> "Articles appearing in the public press may sometimes prevent a fair trial and in such case the judge should have no alternative but to grant a new trial."

And in *Delaney v. United States* (199 F. 2d 107), the court in reversing a denial of a motion for continuance said, *inter alia,* that

> "Many grounds for appeal have been urged on this appeal. But perhaps the strongest point, the one placed first and foremost, and most seriously and earnestly relied upon by appellant, is that the trial judge committed error in not granting a continuance of the trial for a longer period, until such time as it could be estimated with greater assurance that the prejudicial effect of the aforesaid publicity in the newspapers and magazines over the radio and on television, had so worn off that the trial could proceed free of the enveloping hostile atmosphere and public preconception of guilt prevalent on January 3, 1952 when appellant was brought to trial."

In *People v. Talle* (111 Cal. App. 2d 650, 678), the court in a reversal based on the misconduct of the District Attorney said:

> ". . . [P]rosecutive zeal . . . is not a substitute for the orderly, lawful and constitutional processes and guarantees. . . . [P]rosecuting officials have no right to weaken those and other

> protective constitutional devices. . . . [C]onstitutional guarantees are not arbitrary pronouncements adopted to protect the guilty, and to make it difficult for hard working prosecutors. They are the result of struggle in fighting hundreds of years of governmental oppressions. They are necessary to protect the innocent. If an accused, even a guilty accused, cannot be convicted except by a violation of these principles, then he should not and cannot be lawfully convicted."

We deem it clearly shown that the remarks and pretrial activity of the prosecutor made it more than dubious that the petitioner would be accorded a fair trial in Ventura County, California in early 1959. Certainly it is to be expected that in another county where the published remarks of Ventura County's leading elected official had not saturated the press, a more impartial jury, if only more impartial on the question of punishment, would likely have been found. While it is conceivable that in trying the action in another county some additional burden and expense may have accrued to the prosecutor and the state, such factors are certainly trivial when weighed in the balance against the accused's right to a fair and impartial trial in a capital case. To the extent that this added expense and effort is deemed important by the public, its concern may awaken in it the demand for greater restraint by its public prosecutor's and greater deference to the sacred safeguards of fair and constitutional procedure.

The prosecutor is after all the public's elected representative. He and the public must share the blame with the press when his press releases turn the criminal process into a Roman holiday. He is not merely a jurisprudential gladiator, dedicated to victory at all costs. Rather in his occupancy of the key position as the representative of the public he controls to a large extent the whole scene and atmosphere of a criminal trial. He has at hand, if he cares to use it, a lethal weapon for foul play conferred upon him when he takes his oath of office. But he must not use it, for "when prejudice and vindictiveness are built up through weeks or months of carefully slanted news and feature stories, the confidence of the courts themselves and their own ability to mete out even-handed justice is sometimes shaken." *Berge, the Prosecutor and Crime Publicity,* 29 A. B. A. J. 63.

It is impossible for the state on the one hand to guarantee the accused a fair and impartial trial and on the other to allow its evidence to be offered by its own representative in other than a fair and impartial manner. If it has developed that through an excess of zeal the state's representative has prejudiced the rights of the accused, the state must take measures, though they be expensive or convenient to restore the balance.

> "Due process of law, preserved by law by our constitution, commands that no such practice as disclosed by this record shall send any accused to his death. No higher duty, no more solemn re-

sponsibility, rests upon this court than that of translating into living law and maintaining this constitutional shield deliberately planned and inscribed for the benefit of any human being subject to our constitution." *Chambers v. Florida, supra* at 241.

Respectfully submitted,

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